



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on August 21, 2015, at 6:20 PM, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms. The personal service was confirmed as the Proof of Service forms establish that the service was witnessed by “AR” and a signature for “AR” is included on each of the forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on August 21, 2015.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on September 2, 2014, indicating a monthly rent of \$1,600.00 due on the first day of the month for a tenancy commencing on September 1, 2014;
- A Monetary Order Worksheet on which the landlord depicts that the tenants have provided late rent payments for the months of June 2015, July 2015, and August 2015. The information provided on the monetary worksheet indicates that the rent was paid in full for each month, however, the full payments were provided late;
- A copy of a receipt, dated August 20, 2015, which demonstrates that a late rental payment in the amount of \$1,650.00 was provided by the tenants toward rent for the month of August 2015, and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 2, 2015, which the landlord states was served to the tenants on July 2, 2015, for \$1,650.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of August 1, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on July 2, 2015. The Proof of Service establishes that the service was witnessed by "BF" and a signature for "BF" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex*

parte Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord. The landlord provided a copy of a Notice for unpaid rent, dated July 2, 2015, which the landlord states was served to the tenants on July 2, 2015, for \$1,650.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of August 1, 2015. According to the evidence presented by the landlord, the tenants subsequently provided full payment in the amount of \$1,650.00 for July 2015. On the monetary worksheet, the landlord indicates that full payment, in the amount of \$1,650.00, was received on July 20, 2015 for the month of July 2015.

Although the landlord has provided a copy of a receipt, dated August 20, 2015, which demonstrates that a late rental payment in the amount of \$1,650.00 was provided by the tenants toward rent for the month of August 2015, and was acknowledged by the landlord as being received for use and occupancy only, the landlord has not provided a copy of a Notice for unpaid rent for the month of August 2015. Rather, the only Notice for unpaid rent before me is a July 2, 2015 Notice. The landlord has not provided any evidence to suggest that the payment of \$1,650.00 for July 2015 was accepted for use or occupancy only. Therefore, by accepting from the tenants full payment of the outstanding rent owed for July 2015, the landlord has effectively reinstated the tenancy by not acknowledging receipt of the full payment as being received for use and occupancy only.

Based on the foregoing, I find that the tenancy has been reinstated and further find that the Notice dated July 2, 2015 is set aside and is of no force and effect.

As the landlords' application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the July 2, 2015 Notice, without leave to reapply.

Conclusion

I dismiss the landlords' application for an Order of Possession, based on the July 2, 2015 Notice, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 31, 2015

Residential Tenancy Branch

