



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 Proceedings which declares that on August 29, 2015, the landlord personally handed the Notices of Direct Request Proceeding to Person E.M., the daughter of the tenants. The landlord had Person E.M. and a witness sign the Proof of Service of the Notice of Direct Request Proceedings to confirm this service.

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 Proceedings served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant J.M. on November 01, 2013, indicating a monthly rent of \$2,500.00, due on the first day of the month for a tenancy commencing on November 01, 2013;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 16, 2015, and personally handed to Tenant C.M. on August 16,

2015, with a stated effective vacancy date of August 26, 2015, for \$3,565.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant C.M. at 1:34 p.m. on August 16, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on August 16, 2015.

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 of 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. The onus is on the landlord to present evidentiary material that 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.

In this type of matter, the landlord must prove they served the tenants the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notices as per subsections 89 (1) and (2) of the *Act* which permit service by;

- Leaving a copy with the person;
- By sending a copy by registered mail to the address at which the person resides;
- By leaving a copy with an adult who apparently resides with the tenant; and
- By attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I find that the landlord has served the Notices of Direct Request Proceeding to the tenants by leaving it with the daughter of the tenants, Person E.M. There is no indication on the Proof of Service of the Notice of Direct Request Proceedings to establish that Person E.M. is an adult, which is necessary in order determine that the Notices of Direct Request Proceeding were served in accordance with section 89 of the *Act*.

Since I find that I am not able to determine whether the landlord has served the tenants with the notices of this application in accordance with section 89 of the *Act*, the landlord's application for an Order of Possession based on unpaid rent and a monetary Order is dismissed, with leave to reapply.

Conclusion

I dismiss the landlord's application, with 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: September 02, 2015

Residential Tenancy Branch

