



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to subsection 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 and a monetary order.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- a copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- a copy of a residential tenancy agreement;
- a Monetary Order Worksheet; and
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice);
- a copy of the Proof of Service of the 10 Day Notice.

The 10 Day Notice does not include the name of the landlord or name of the agent signing on behalf of the corporate landlord. The fields for these names have been left blank.

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 of the tenant 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.

Residential Tenancy Policy Guideline “39. Direct Requests” sets out the burden of proof on the landlord. This guideline sets out that a landlord must provide copies of:

1. the tenancy agreement;
2. documents showing changes to the tenancy agreement or tenancy;
3. documents supporting the amount of rent due;
4. the 10 Day Notice; and
5. proof that the landlord served the tenant with the 10 Day Notice.

Section 52 of the Act reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The approved form for a 10 Day Notice is #RTB-30 (2015/04). The landlord has used this form; however, the landlord has neglected to fill out all the fields. In particular, the landlord has not indicated its full legal name or the name of the person signing as agent.

Subsection 68(2) would allow me to cure this defect in the case of a participatory hearing at the request of the landlord. I decline to exercise my discretion to fix these defects as I am uncertain as to the name of the landlord's agent and I do not have any application from the landlords to make such an amendment. Further, it would be highly prejudicial to the tenant to make such an amendment in an *ex parte* application. The landlord's direct request application is dismissed with leave to reapply as a participatory hearing.

Given the flaws in the current 10 Day Notice, the landlord may choose to reissue a 10 Day Notice to the tenant. In the alternative, the landlord may make a request of an

arbitrator in a participatory hearing to amend the current 10 Day Notice. The landlord is cautioned that this request may be granted at the arbitrator's discretion and the landlord is not entitled to any amendments.

Conclusion

The landlord's application is dismissed with leave to reapply with the caution as noted above.

Leave to reapply is not an extension of any applicable limitation period.

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

Dated: November 12, 2015

Residential Tenancy Branch

