



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on November 13, 2015, the landlords posted the Notice of Direct Request Proceeding to the door of the rental unit.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 which was signed by the landlord and the tenant on June 27, 2015, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on July 1, 2015;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 2, 2015, with a stated effective vacancy date of November 11, 2015, for \$1,000.00 in unpaid rent.

The 10 Day Notice states that the tenant 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

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 that such evidentiary material 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 landlords must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as section 89 of the *Act*.

On the Proof of Service Notice of Direct Request Proceeding, I find that the person who posted the Notice of Direct Request Proceeding to the door of the rental unit is the same as the person who witnessed the posting to confirm service of the documents to the tenant.

I find that I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant.

I further note that in this type of matter, the landlords must prove that they served the tenant with the 10 Day Notice as per Sections 71(2)(a) and 88 of the *Act*.

Director's orders: delivery and service of documents

71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

The service requirements for direct request materials are narrow to reflect the fact that the tenant does not have an opportunity to present evidence on the issues, unless they previously filed their own application for dispute resolution, seeking cancellation of the Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:
registered mail;
in person, with a witness verifying it was served; or
by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:
registered mail receipt and printed tracking report;
a receipt signed by the tenant, stating they took hand delivery of the document(s); or
a witness statement that they saw the landlord deliver the document(s).

The landlords submitted a copy of a text message including a photo of the 10 Day Notice. I find that sending a text message does not comply with the requirements set out in the *Act* or Policy Guideline for serving the 10 Day Notice.

I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process, and that a participatory hearing is the only venue that will allow for the clarification of this fact.

Therefore, since I find that the landlords have not proven service of the 10 Day Notice or the Notice of Direct Request Proceeding, the landlords' application for an Order of Possession based on unpaid rent and a Monetary Order is dismissed, with leave to reapply.

Conclusion

The landlords' application is dismissed 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: November 17, 2015

Residential Tenancy Branch

