



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 8, 2016, the landlord slid the Notice of Direct Request Proceeding under the door of the rental unit.

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:

- 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 September 1, 2015, indicating a monthly rent of \$700.00, \$350.00

due on the first day of the month and \$350.00 due on the fifteenth day of the month, for a tenancy commencing on September 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 January 1, 2016, with a stated effective vacancy date of January 11, 2016, for \$150.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was placed under the tenant's door at 5:30 (a.m. or p.m. not indicated) on December 31, 2015. 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 landlord must prove they served the tenant the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice 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 Notice of Direct Request Proceeding by sliding it under the door of the rental unit, which is not a method of service that is in accordance with section 89 of the *Act*.

I also note that in this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act* and Residential Tenancy Policy Guideline # 39.

Residential Tenancy Policy Guideline # 39 contains 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.**

On the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice under the door of the rental unit.

I find that the 10 Day Notice has not been served in accordance with Section 88 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of January 1, 2016, without leave to reapply. The 10 Day Notice of January 1, 2016 is cancelled and of no force or effect.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by Section 88 of the *Act* or according to Residential Tenancy Policy Guideline #39 if the landlord wants to apply through the Direct Request process.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of January 1, 2016 is dismissed, without leave to reapply. The 10 Day Notice of January 1, 2016 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: January 12, 2016

Residential Tenancy Branch

