



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

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 12, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on January 17, 2016, the fifth day after their registered mailing.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 October 5, 2015, indicating a monthly rent of \$1,200.00, due on the first day of the month for a tenancy commencing on October 5, 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 December 3, 2015, and sent to the tenant by registered mail on December 4, 2015, with a stated effective vacancy date of December 14, 2015, for \$1,500.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent to the tenant by registered mail at 1:19 pm on December 4, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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.

Section 59 of the *Act* provides the following requirements regarding the Application for Dispute Resolution:

59 (1) [Repealed 2006-35-83.]

(2) An application for dispute resolution must

(a) **be in the applicable approved form,**

(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings,** and

(c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

(4) The director may waive or reduce the fee if satisfied that

(a) the applicant cannot reasonably afford to pay the fee, or

(b) the circumstances do not warrant the fee being collected.

(5) The director may refuse to accept an application for dispute resolution if

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,

(b) the applicant owes outstanding fees under this Act to the government, or

(c) **the application does not comply with subsection (2).**

(6) An individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

I find that the Application for Dispute Resolution submitted by the landlord does not include the respondent's address, which is a required particular of that application. I find that the Application for Dispute Resolution is incomplete, and for this reason, I dismiss the landlord's application for an Order of Possession and a Monetary Order with leave to reapply.

Conclusion

The landlord's application for an Order of Possession and a Monetary Order 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: January 18, 2016

Residential Tenancy Branch

