



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 signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 04, 2016, at 9:40 PM, the landlords’ agent “BK” served the tenant “SM” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery.

The landlords submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 05, 2016, the landlords’ agent “MS” served the respondent “LM” with the Notice of Direct Request Proceeding via registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 landlords and the tenant “SM” on March 19, 2015, indicating a monthly rent of \$1,100.00 due on the 15th day of the month for a tenancy commencing on March 19, 2015. Although a second individual, identified as “LM”, is named as a respondent tenant on the application, a signature for “LM” does not appear on the tenancy agreement to demonstrate that “LM” endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlords’ application against the tenant “SM” only;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$600.00, comprised of the balance of unpaid rent owing for January 2016. The monetary order worksheet indicates that a partial payment of \$500.00 was received on January 02, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 23, 2016, which the landlords state was served to the tenant on January 23, 2016 for \$600.00 in unpaid rent due on January 01, 2016, with a stated effective vacancy date of February 04, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlords’ agent “MS” served the Notice to the tenant by way of posting it to the door of the rental unit at 12:30 PM on January 23, 2016. The Proof of Service establishes that the service was witnessed by “LS” and a signature for “LS” is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlords alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlords. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on January 26, 2016, three days after its posting.

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 for 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.

In this type of matter, the landlord must prove she served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. 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 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.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service form to confirm how the Notice of Direct Request Proceeding documents were served. Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 88 of the *Act*. Section 88 of the *Act* does permit a respondent to be personally served by hand. If service of the Direct Request Proceeding documents is completed in this manner, the landlord must prove the personal service by having the tenant acknowledge receipt of the Direct Request Proceeding documents by signing the Proof of Service form, or by having a witness provide a name and signature on the Proof of Service form to attest to witnessing the service of the documents.

Policy Guideline #39 states that the landlord must complete and submit the proof of service form that was included as part of the landlord's Direct Request package. The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 04, 2016, at 9:40 PM, the landlords' agent "BK" served the tenant "SM" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. On the Proof of Service of the Notice of Direct Request Proceeding form, the landlords demonstrate that the landlords' agent "BK" served the Notice of Direct Request Proceeding and provided a signature to demonstrate that "BK" served the documents.

However, the Proof of Service of the Notice of Direct Request Proceeding form does not demonstrate that the service of the documents was witnessed; rather, under the section where a witness is to provide a name and signature, the agent "BK" has entered his/her own name and signature. I find that the proof of service form does not include a name and signature of an individual other than the agent "BK" to illustrate that the service of the documents was witnessed. Furthermore, the proof of service form does not include a signature of the tenant being served to demonstrate that the tenant acknowledged receipt of the Direct Request Proceeding documents.

The landlords have not demonstrated that the personal service of the documents via hand-delivery was witnessed by an individual other than the person serving the documents, nor have they proven that the personal service of the documents was acknowledged by the tenant. I further find that there is no evidence before me that

establishes that the landlords were given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Therefore, I find that the landlords have not established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39. Based on the foregoing, I dismiss the landlords' application with leave to reapply.

It remains open to the landlords to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlords may wish to submit an application for dispute resolution to be heard via a participatory hearing.

Conclusion

I dismiss the landlords' 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: February 12, 2016

Residential Tenancy Branch

