



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 one signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 19, 2016, the landlord's agent served the tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided one copy of a Canada Post Customer Receipt containing the Tracking Number to confirm this 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*?

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 tenants;
- A copy of a residential tenancy agreement which was signed by the tenants on June 01, 2015, indicating a monthly rent of \$950.00 due on the first day of the month for a tenancy commencing on June 01, 2015;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent

owed in the amount of \$950.00, comprised of the balance of unpaid rent owed for the month of May 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2016, which the landlord states was served to the tenants on May 02, 2016, for \$950.00 in unpaid rent due on May 01, 2016, with a stated effective vacancy date of May 12, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RS" served the Notice to the tenants by way of posting it to the door of the rental unit on May 02, 2016. The Proof of Service establishes that the service was witnessed by "GW" and a signature for "GW" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

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 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 they 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.

I have reviewed all documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord indicates that the tenants were served the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the landlord must provide evidentiary material, in the form of a Canada Post Registered Mail Receipt which includes the tracking number, and the name of the person to whom the registered mailed item was addressed, along with the destination address to which the mailed item is to be delivered, as proof of service via registered mail. The landlord is also required to provide a complete Proof of Service of the Notice of Direct Request Proceeding form for each respondent tenant. However, the landlord has provided only one Proof of Service of the Notice of Direct Request Proceeding form on which the names of both respondent tenants are depicted.

The landlord has provided only one Canada Post Registered Mail Receipt which includes the names of both respondent tenants. In the absence of more supporting

information, I am unable to determine or infer within the limited scope of the Direct Request process, which of the two respondent tenants were the intended recipients of the registered mail item, and further, I am unable to confirm which respondent tenant received the hearing documents by way of registered mail.

I find that the registered mail receipt submitted by the landlord shows that the landlord may have placed both of the Notices of Direct Request Proceeding in the same envelope with multiple persons named. In an ex parte hearing, I find that I am not able to confirm service of the Notices of the Direct Request Proceeding to each of the parties individually as required by sections 71 and 89 of the *Act*.

Therefore, I find that the landlord has not proven service of the Notice of Direct Request Proceeding to either respondent tenant in accordance with the *Act*. I further find that there is no evidence before me that establishes that the landlord was 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*.

Based on the foregoing, I find that the landlord has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, I dismiss the landlord's application for an Order of Possession with leave to reapply.

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are 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 tenants are deemed to have received the Notice on May 05, 2016, three days after its posting.

Section 46 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 55(2) of the *Act* provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that, as the tenants received the Notice on May 05, 2016, the tenants' latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been May 10, 2016. By extension of the provisions of subsection 55(2)(b) of the *Act*, the landlord's earliest opportunity to apply for an Order of Possession would therefore have been May 11, 2016.

I find that the landlord has filed an application for an Order of Possession via dispute resolution by Direct Request earlier than permitted by the *Act*, as the landlord filed an "Application for Dispute Resolution by Direct Request" on May 10, 2016, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on May 10, 2016.

I further find that the landlord has not provided any evidentiary material to demonstrate that the tenants received the May 02, 2016 Notice earlier than May 05, 2016. Based on the foregoing, the landlord's application for an Order of Possession is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's 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: May 24, 2016

Residential Tenancy Branch