



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 May 26, 2016, the landlord's agent “RL” served the tenant “LH” with the Notice of Direct Request Proceeding via registered mail. The landlord 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.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant “LH” has been deemed served with the Direct Request Proceeding documents on May 31, 2016, the fifth day after their registered mailing.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 27, 2016, the landlord's agent “RL” served the tenant “KH” with the Notice of Direct Request Proceeding via registered mail. The landlord 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.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant “KH” has been deemed served with the Direct Request Proceeding documents on June 01, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement indicating a monthly rent of \$850.00 for a tenancy commencing on March 15, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,410.00 for outstanding rent, comprised of the balance of unpaid rent owing for the months of December 2015, March 2016, and April 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 21, 2016, which the landlord states was served to the tenants on April 21, 2016, for \$1,410.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of May 02, 2016;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "PM" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "LH" on April 21, 2016. The Proof of Service form establishes that the service was witnessed by "RL" and a signature for "RL" is included on the form;
- A copy of a letter dated May 05, 2016, from the applicant landlord, addressed to the tenants;
- A copy of a letter dated May 10, 2016;
- A copy of a letter dated May 13, 2016;
- A copy of an email message dated May 13, 2016;
- A copy of a receipt, dated December 20, 2015, which depicts that a partial payment of \$700.00 was provided by the tenant "LH"; and
- A copy of a receipt, dated March 10, 2016, which depicts that a partial payment of \$540.00 was provided by the tenant "LH";

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.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due.

“Policy Guideline #39, Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. I find that the landlord has provided a copy of a tenancy agreement which is not in accordance with section 13 of the *Act*. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

The *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

12 (1) A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the day in the month on which the rent is due. The tenancy agreement states that rent in the amount of \$850.00 is due per month; however, it is not specified as to the particular day in the month on which the monthly rent is due.

As the landlord has not demonstrated the day in the month on which the monthly rent is due, by extension then, the landlord has not established that the Notice was provided to the tenant on a date that is consistent with section 46 of the *Act*, which provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46 of the *Act* provides that the landlord may give the Notice to the tenant after the day that rent is due. However, as the tenancy agreement does not indicate the day on which rent is due, it follows then, that the landlord has not demonstrated that the Notice provided to the tenants was served in accordance with section 46 of the *Act*, such that it was served on a day *after* the rent was due.

Based on the foregoing, I find that the landlord's application contains deficiencies which give rise to concerns as to the date on which the parties agreed that the monthly rent is due, and further, whether the tenants acknowledged that the Notice was served in accordance with section 46 of the *Act*, depending on the understanding between the parties as to the date on which the monthly rent is due.

I find that the landlord has provided a copy of the tenancy agreement which is not complete, as it is missing pages 4 through 6. The tenancy agreement provided by the landlord does not include the signatures of any of the parties listed on the first page of the agreement to demonstrate that the parties to the agreement endorsed the terms of the agreement by providing their respective signatures on the agreement to enter into a tenancy agreement.

In the absence of a complete tenancy agreement which establishes that the parties endorsed the terms of the tenancy agreement by the signing the agreement, I find that the landlord's application contains a deficiency which does not permit me to consider

this application for dispute resolution via the Direct Request process. Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord 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 landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 31, 2016

Residential Tenancy Branch