



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 28, 2016, at 9:00 PM, the landlord’s agent “LF” served the tenant with the Notice of Direct Request Proceeding by way of sliding the hearing documents under the door of the rental unit. The Proof of Service form establishes that the service was witnessed by “AF” and a signature for “AF” is included on the form.

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’s agent and the tenant on November 01, 2014, indicating a monthly rent of \$850.00 due on the first day of the month for a tenancy commencing on November 01, 2014;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$200.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of April 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 09, 2016, which the landlord states was served to the tenant on May 13, 2016, for \$200.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of May 23, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "LF" served the Notice to the tenant by way of slipping the Notice under the door of the rental unit on May 13, 2016. The Proof of Service establishes that the service was witnessed by "VF" and a signature for "VF" 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 landlord alleged that the tenant 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 documents comprising an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

- 89** (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:

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord contends that service of the documents was carried out in a manner consistent with the provisions of section 89 of *Act*, as they were attached to a noticeable place at the address at which the tenant resides. The landlord provided a hand-written statement on the form which demonstrates that the documents were served by way of sliding the hearing documents under the door of the rental unit.

The information provided by the landlord with respect to the manner in which the hearing documents were served demonstrates that the documents were not attached or affixed to the door, nor were they attached to a noticeable place, as required under the service provisions of the *Act*, but were instead slid under the door of the rental unit. The landlord has not provided any further details to demonstrate that the documents were **attached to a noticeable place** [emphasis added]. Rather, the landlord has provided a statement which does not demonstrate that they were attached, as required under the provisions of section 89(2) of the *Act*. Instead, the landlord's statement demonstrates that the documents were slid under the door, which is not a method of service permitted under section 89 of *Act*.

Therefore, I find that the landlord has not served the hearing documents in a manner approved by the *Act*, by attaching them to the door or other conspicuous place, as provided under section 89(2) of 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 served the Notice of Direct Request Proceeding 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 and a monetary Order with leave to reapply.

I have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or 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;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the first page of the Proof of Service of the Notice form, the landlord's agent "LF" has checked a box indicating that the Notice was attached to the door. However, the landlord's agent also states, under the "special details" section, that the Notice was left under the door of the rental unit.

I find that, by serving the Notice by way of leaving it under the door of the rental unit, the landlord's agent has not served the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and therefore, the Notice is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based

on the May 09, 2016 Notice, without leave to reapply. The landlord may wish to serve a new Notice to the tenant if the landlord so wishes.

I dismiss the landlord's application for a monetary Order with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the May 09, 2016 Notice, without leave to reapply. I dismiss the landlord's application for a monetary Order 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: June 02, 2016

Residential Tenancy Branch