



Dispute Resolution Services

Page: 1

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 and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 22, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding, by way of FedEx courier, to the rental unit. The landlord provided a copy of the FedEx 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 landlord and the tenant on August 01, 2010, indicating a monthly rent of \$500.00, due on the first day of the month for a tenancy commencing on August 01, 2010;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$500.00 to the current monthly rent amount of \$550.00;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 29, 2016, and personally handed to the tenant on June 29, 2016, with a stated effective vacancy date of July 10, 2016, for \$550.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 6:45 p.m. on June 29, 2016. 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

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on June 29, 2016.

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 of 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 with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service “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.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Section 71 of the *Act* and the Director’s plenary order of June 29, 2016, which was issued in anticipation of a Canada Post work stoppage, allows for a method of service that requires confirmation of delivery to a named person and is comparable with the mail delivery provided by Canada Post.

I find that the tracking number provided by the landlord on the Proof of Service Notice of Direct Request Proceeding is for a package sent by FedEx courier, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, FedEx’s Online Tracking System shows

that the package was left at the front door of the rental unit and that a signature was not required for the delivery of this FedEx package, and as such, does not meet the definition of registered mail as defined under the *Act* and is not comparable to it. Since I find that the landlord has not served the tenant with notice of this application in accordance with Section 89 of the *Act*, I dismiss the landlord's application for an Order of Possession with leave to reapply.

I note that the maximum allowable rent increase for 2016 is 2.9%. The Notice of Rent Increase form submitted by the landlord shows a rent increase of \$50.00, which is a 10% increase and is more than the maximum allowable increase allowed by the *Act*.

Conclusion

The landlord's application is dismissed with leave to reapply.

This interim 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: July 28, 2016

Residential Tenancy Branch