



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKSIDE REALTY INC.
and [tenant name suppressed to protect privacy]

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 January 30, 2017, the landlord slid the Notice of Direct Request Proceeding under the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

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 and the tenant on November 4, 2016, indicating a monthly rent of \$1,300.00, due on the first day of the month for a tenancy commencing on December 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 5, 2017, and posted to the tenant's door on January 5, 2017, with a stated effective vacancy date of January 15, 2017, for \$1,300.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door January 5, 2017. 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 8, 2017, three days after its posting.

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 that such evidentiary material 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.

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 section 89 of the *Act*.

I note that Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be posted to the door of the rental unit but only when considering an Order of Possession for the landlord.

I note that the *Act* does not allow for service of the Notice of Direct Request Proceeding by sliding it under the door.

I find that, by serving the Notice of Direct Request Proceeding by way of slipping it under the door of the rental unit, the landlord has not served the documents in a manner consistent with the service provisions for documents as provided under section 89. I further find that there is no evidence before me establishing that the landlord was given leave to serve the Notice of Direct Request Proceeding in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 89(1)(e) of the *Act*.

For this reason, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application for a Monetary Order and an Order of Possession is dismissed 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: January 31, 2017

Residential Tenancy Branch