



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

EX PARTE PROCEEDING

(DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.

A matter regarding RIVERWALK VILLAS 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 February 10, 2017, the landlord served tenant the Notice of Direct Request Proceeding by pushing the documents under the door and into 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 December 14, 2015, indicating a monthly rent of \$799.00, due on the first day of the month for a tenancy commencing on December 16, 2015;
- A Monetary Order Worksheet; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 9, 2017, and posted to the tenant's door on January 9, 2017, with a stated effective vacancy date of January 19, 2017, for \$822.50 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 4:00 pm on January 9, 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

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*.

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.

On the Proof of Service of the Notice of Direct Request Proceeding, the landlord has indicated that they placed the Notice of Direct Request Proceeding under the door of the rental unit.

I find that the Notice of Direct Request Proceeding has not been served in accordance with section 89 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession and a Monetary Order with leave to reapply.

Conclusion

The landlord's application 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: February 10, 2017

Residential Tenancy Branch