



Dispute Resolution Services

Page: 1

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 August 23, 2017, the landlord handed the Notice of Direct Request Proceeding to Person L.A. The landlord had Person L.A. and 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 a residential tenancy agreement which was signed by the landlord indicating a monthly rent of \$1,800.00, due on the thirtieth day of each month for a tenancy commencing on February 1, 2017;
- 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 August 9, 2017, with a stated effective vacancy date of August 20, 2017, for \$1,800.00 in unpaid rent.

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 per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant. Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering the issuance of an Order of Possession for the landlord.

The Proof of Service of the Notice of Direct Request Proceeding that was submitted by the landlord indicates service to Person L.A., but there is no indication or documentation in the evidence that the person who received the documents was an adult, or that they apparently reside with the tenant.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.” I find that the residential tenancy agreement submitted by the landlord is not signed by the tenant, which is a requirement of the direct request process.

I have reviewed all documentary evidence and I find that the landlord’s name on the residential tenancy agreement does not match the landlord’s name on the Application for Dispute Resolution, the 10 Day Notice or any other documentation submitted with the Application for Dispute Resolution. There is also no documentation referring to the

transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution.

The discrepancies above raise questions that cannot be answered within the purview of a Direct Request Proceeding and might have been addressed in a participatory hearing. However, I find that these were not the only discrepancies in the landlord's application.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by registered mail, leaving a copy with the tenant, leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice on the floor by the open door. I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) **give the address of the rental unit,***
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that there is no address, from where the tenant must move out of or vacate, on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of August 9, 2017, without leave to reapply.

The 10 Day Notice of August 9, 2017, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for a Monetary Order is dismissed, with leave to reapply.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of August 9, 2017, is dismissed without leave to reapply.

The 10 Day Notice of August 9, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: August 29, 2017

Residential Tenancy Branch