



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 30, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of one Canada Post Customer Receipt containing a 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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 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 and the tenants on September 6, 2017, indicating a monthly rent of \$2,150.00, due on the first day of each month for a tenancy commencing on September 15, 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 October 13, 2017, with a stated effective vacancy date of October 23, 2017, for \$2,150.00 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 tenants with the Notices 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 landlord must also prove that they served each tenant with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. On the Proof of Service of the Notice of Direct Request Proceeding form, the wording reads as follows: “You must serve these documents to each respondent individually...”

I find that the landlord has only provided one registered mail receipt and that this receipt does not indicate to whom the mailing was addressed. I find that I am not able to determine whether the landlord sent the registered mail package to Tenant T.K., to Tenant G.F., or if the landlord included both Notices of Direct Request Proceeding in the one envelope.

The landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;
- in person, with a witness verifying it was served; or
- **by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.**

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

registered mail receipt and printed tracking report;

a receipt signed by the tenant, stating they took hand delivery of the document(s); or

a witness statement that they saw the landlord deliver the document(s).

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant. Although the landlord provided a photograph of a notice attached to a door, I find that a picture is not sufficient proof of service in accordance with Sections 71(2) (a) and 88 of the *Act* and Residential Tenancy Policy Guideline # 39.

As I am not able to confirm service of the 10 Day Notice or the Notices of Direct Request Proceeding to the tenants, which is a requirement of the Direct Request proceeding, I dismiss the landlord's application for an Order of Possession for unpaid rent and a Monetary Order with leave to reapply.

Conclusion

I dismiss the landlord's application 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: November 02, 2017

Residential Tenancy Branch