



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 10, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submission of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on November 15, 2017, the fifth day after their registered 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 a landlord, who is not the applicant, and the tenant on October 02, 2015, indicating a monthly

rent of \$1,075.00, due on the first day of each month for a tenancy commencing on October 10, 2015;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 18, 2017 for \$1,075.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of October 28, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to the tenant at 6:10 p.m. on October 18, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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.

The onus is on the landlord to present evidentiary material that 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.

I have reviewed all documentary evidence and I find that the landlord's name on the Application for Dispute Resolution does not match the landlord's name on the Residential Tenancy Agreement, the 10 Day Notice or any other documentation submitted with this application. There is documentation submitted referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution, or that the landlord named on the application has legal entitlement to the rental unit.

I find that as I unable to confirm the landlord's entitlement to make a claim under the *Act*, I dismiss the landlord's application for an Order of Possession and Monetary Order based on the 10 Day Notice with leave to reapply.

I also note that in a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the 10 Day Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I would not have been able to hear the monetary portion of the landlord's application for rent owed for November 2017.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application for an Order for the recovery of the filing fee without 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 *Act*.

Dated: November 16, 2017

Residential Tenancy Branch