



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 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 submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant will be deemed served with the Direct Request Proceeding documents on November 27, 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*?

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 tenant on September 27, 2016, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on October 01, 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 02, 2017 for \$2,519.70 in unpaid rent and \$192.92 in unpaid utilities (the 10 Day Notice). The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 12, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left with an adult who apparently lives with the tenant at 4:20 p.m. on November 03, 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.

In this type of matter, the landlord must prove that they served the tenant 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;
- by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served; or
- Leaving a copy with an adult who apparently resides with the tenant.**

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);
- a witness statement that they saw the landlord deliver the document(s);
- or
- a signed witness statement confirming the name of the person who served the documents by hand delivering them to an adult **who apparently resides with the tenant**, what document(s) they served, the date and time of service and the name of the person the documents were served to.

Section 88 of the *Act* allows for the 10 Day Notice to be left with an adult who resides with the tenant. In that regard, the Proof of Service Notice to End Tenancy submitted into evidence indicates service to Person B.A. However, while I accept from the written submission that Person B.A. is an adult, there is no indication or documentation submitted that Person B.A. resides with the tenant.

As I am not able to confirm service of the 10 Day Notice to the tenant in accordance with section 88 of the *Act*, which is a requirement of the Direct Request proceeding, I dismiss the landlord's application for an Order of Possession and Monetary Order based on the 10 Day Notice, with leave to reapply.

Of note, I would not have been able to consider the landlord's monetary claim for unpaid utilities as there was no proof of service of the demand letter submitted into evidence.

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 and utilities 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 *Act*.

Dated: November 23, 2017

Residential Tenancy Branch