



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 25, 2017, the landlord served the tenant the Notice of Direct Request Proceeding by handing the documents to Person T.N. The landlord had Person T.N. 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*?

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 tenant on June 4, 2015, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on June 5, 2015;

- Two copies of Notice of Rent Increase forms showing the rent being increased from \$1,200.00 to the monthly rent amount of \$1,300.00;
- A copy of a utility bill from BC Hydro for the rental unit dated October 26, 2017 for \$204.10;
- A copy of a utility bill from Fortis for the rental unit dated October 23, 2017 for \$107.87;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 10, 2017 for \$1,300.00 in unpaid rent and \$76.80 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 in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 10, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 8:00 pm on November 10, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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 material does not lend itself to ambiguity or give rise to issues that may need 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 T.N., 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.

If I had any indication that the person who received the Notice of Direct Request Proceeding was an adult who resides with the tenant, I could have considered whether to issue the Order of Possession as per Section 89(2) of the *Act*. I would not have been able to issue any monetary award as per Section 89(1) of the *Act*.

I find that I am not able to confirm service of the Notice of the Direct Request Proceeding in compliance with the Section 89 of the *Act* and for this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was not successful 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 and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application 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 *Residential Tenancy Act*.

Dated: November 27, 2017

Residential Tenancy Branch