



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 24, 2017, the landlords posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlords and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 27, 2017, the third day after their posting.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 31, 2017, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on August 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 1, 2017 for \$2,200.00 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 November 13, 2017;
- A copy of a Proof of Service Notice to End Tenancy form; 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 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 landlords 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; 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 first page of the Proof of Service Notice to End Tenancy the landlords have indicated that they served the 10 Day Notice by attaching a copy to the door and by sending a copy by registered mail. However, the landlords have not indicated the date on which the 10 Day Notice was served to the tenant.

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of the landlord. There is also no signature of a witness to confirm service of the 10 Day Notice to the tenant by attaching to the door. I also note that the landlords have not provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm service by registered mail.

As I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding, the landlords' application for an Order of Possession and a Monetary Order is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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 28, 2017

Residential Tenancy Branch