



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 December 8, 2017, the landlords posted the Notice of Direct Request Proceeding to the door of the rental unit.

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 which indicates that the 10 Day Notice was sent to the tenant by registered mail at 2:00 pm on November 2, 2017;
- A copy of a Canada Post Tracking Report containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on November 2, 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 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 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*.

On the Proof of Service of the Notice of Direct Request Proceeding, I find that there is no signature of a person who witnessed the Notice of Direct Request Proceeding being posted to the door of the rental unit to confirm service of the documents to the tenant. Although there are two signatures, the person who served the documents also signed the Proof of Service of the Notice of Direct Request Proceeding as a witness.

I find that I am not able to confirm service of the Notice of Direct Request to the tenant, which is a requirement of the Direct Request process. For this reason the landlords' 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 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: December 11, 2017

Residential Tenancy Branch