



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on December 20, 2017, the landlord personally served Tenant J.K. and Tenant T.W. the Notice of Direct Request Proceeding. The landlord had the tenants and a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that Tenant J.K. and Tenant T.W. have been duly served with the Direct Request Proceeding documents on December 20, 2017.

The landlord has not provided a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding to Tenant J.D. Therefore, I dismiss the landlord's application against Tenant J.D. for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I will hear the landlord's application against Tenant J.K. and Tenant T.W.

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 Tenant J.D. on October 31, 2017, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on November 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 6, 2017 for \$2,500.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the tenants 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 December 16, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant T.W. and indicates that the 10 Day Notice was personally served to the tenants on December 6, 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.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlord is not signed by Tenant J.K or by Tenant T.W., which is a requirement of the direct request process. For

this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent naming Tenant J.K. and Tenant T.W. 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: December 21, 2017

Residential Tenancy Branch