



Dispute Resolution Services

Page: 1

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 December 09, 2017, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on December 14, 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*?

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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement, dated October 01, 2015, indicating a monthly rent of \$1,275.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 02, 2017, which the landlord states was served to the tenant on December 02, 2017, for \$1,550.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 12, 2017. The notice depicts that a sum of \$1,275.00 was due on December 01, 2017, with a balance of \$275.00 owed on November 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,550.00 for outstanding rent, comprised of a balance of \$275.00 owed for November 2017 and \$1,275.00 owed for December 2017. The worksheet indicates that a partial payment of \$600.00 was received on November 03, 2017, and a second partial payment of \$400.00 was received on November 27, 2017;
- A document, which the landlord contends is a text message from the tenant, but which is depicted as, and appears as, plain computer text and does not include any identifiers to depict that it is a message from the tenant;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants on December 02, 2017, at 12:00 PM, by way of leaving the Notice with an individual described by the landlord as being the adult son of the tenant, who the landlord contends is an adult who apparently resides with the tenant;

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

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 for 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 they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

I have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a

landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

The landlord stated that the Notice was served to the tenant by leaving it with an adult who apparently resides with the tenant, identified on the application form only by a first name beginning with "S", who, as the landlord contends, is the adult son of the tenant. If service of the Notice is carried out in this manner, the landlord is required to provide details that support the landlord's claim that the adult to whom the Notice was given does indeed reside with the tenant. I find that the information provided by the landlord does not adequately demonstrate that this requirement has been fulfilled and does not provide sufficient details to clearly establish that service of the Notice was carried out in a manner consistent with section 88 of the *Act*.

The tenancy agreement included with this application does not indicate whether any other tenants or occupants, specifically an individual identified as bearing the same name as "S" resides with the tenant and does not contain any information to identify whether the individual identified as "S" is an adult who resides with the tenant. The Proof of Service form provided by the landlord does not include any additional information to establish that "S" is in fact an adult who apparently resides with the tenant, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether "S" is an adult who apparently resides with the tenant.

Although the landlord has provided an electronic copy of text which he contends is a text message from the tenant confirming receipt of the Notice, the text does not contain any identifiers, such as names, phone numbers, or any other verifiable information to depict the identity of the sender or author of the text, to demonstrate that the text provided was that of a text message sent by the tenant.

I find that, by serving the Notice to an individual that has not been clearly proven to be an adult who apparently resides with the tenant, the landlord has not proven service of the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*. Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address

of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due.

“Policy Guideline #39, Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of the tenancy agreement. I find that the landlord has provided a copy of a tenancy agreement which is not in accordance with section 13 of the *Act*. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the day in the month on which the rent is due. The tenancy agreement states that rent in the amount of \$1,275.00 is due per month; however, it is not specified as to the particular day in the month on which the monthly rent is due.

As the landlord has not demonstrated the day in the month on which the monthly rent is due, by extension then, the landlord has not established that the Notice was provided to the tenant on a date that is consistent with section 46 of the *Act*, which provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46 of the *Act* provides that the landlord may give the Notice to the tenant after the day that rent is due. However, as the tenancy agreement does not indicate the day on which rent is due, it follows then, that the landlord has not demonstrated that the Notice provided to the tenant was served in accordance with section 46 of the *Act*, such that it was served on a day *after* the rent was due.

Based on the foregoing, I find that the landlord's application contains deficiencies which give rise to concerns as to the date on which the parties agreed that the monthly rent is due, and further, whether the tenant acknowledged that the Notice was served in

accordance with section 46 of the *Act*, depending on the understanding between the parties as to the date on which the monthly rent is due.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the Applicant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material which may clarify the questions raised by these inconsistencies.

Therefore, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

Conclusion

I dismiss the landlord's application 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 *Residential Tenancy Act*.

Dated: December 15, 2017

Residential Tenancy Branch