



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 December 10, 2017, the landlord’s agent “KI” 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 15, 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 which was signed by the landlord and the tenant on October 28, 2016, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on November 01, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 26, 2017, which the landlord states was served to the tenant on November 26, 2017, for \$4,200.00 in unpaid rent due on November 01, 2017, with a stated effective vacancy date of December 06, 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 \$5,600.00 for outstanding rent, comprised of unpaid rent owed in the amount of \$1,400.00 for each of May 2017, October 2017, November 2017, and December 2017. The landlord indicates that a payment of \$4,200.00 was provided since the Notice was issued; and
- A copy of the Proof of Service of the Notice asserting that the landlord's agent "KI" served the Notice to the tenant by way of personal service via hand-delivery on November 26, 2017. The Proof of Service form establishes that the service was witnessed by "AI" and a signature for "AI" is included on the form.

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 landlords 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. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of the Notice to End Tenancy" form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

C. PROOF OF SERVICE

C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

On the Proof of Service of the Notice to End Tenancy form, the landlord contends that the landlord's agent "DI" served the Notice to End Tenancy to the tenant by way of personal service via hand-delivery. The landlord contends that the service was witnessed by "AI" and a signature for "AI" is included on the form.

However, within the Direct Request process, the person serving the Notice to End Tenancy must provide a signature on the Proof of Service of the Notice to End Tenancy form. The Proof of Service of the Notice to End Tenancy form serves to allow the person serving the Notice to End Tenancy to provide a written attestation to confirm service of the Notice.

I find that the form submitted by the landlord indicates that the agent serving the notice, "DI", did not provide a signature on the second page of the form in the field where service of the Notice to End Tenancy is to be confirmed. Based on the foregoing, I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process.

In addition, I find that there is a discrepancy in the amount of unpaid rent which comprises the landlord's monetary claim, as indicated on the application for dispute resolution, and the amount indicated on the Notice to End Tenancy issued to the tenant for rent due by November 01, 2017. The sum of the rent owed, as indicated on the application for dispute resolution, results in a balance of unpaid rent in the amount of \$5,600.00. The balance relies on the inclusion of unpaid rent owed for the month of December 2017.

However, the Notice to End Tenancy, dated November 26, 2017, which the landlord contends was served to the tenant on November 26, 2017, states the amount of unpaid rent due by November 01, 2017. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice indicates that rent was due by, in this case, November 01, 2017. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from unpaid rent owed for December 2017.

I further find that the Direct Request Worksheet provided by the landlord depicts that the tenant provided a payment of \$4,200.00 after the Notice was issued. However, the landlord does not provide any additional evidentiary material to demonstrate the date on which the payment of \$4,200.00, as detailed on the Direct Request Worksheet, was provided, or whether the payment sufficiently remedied the issue of the unpaid rental arrears which gave rise to the issuing of the November 26, 2017 Notice issued to the tenant, and, by extension, whether the payment was provided within the five days granted under section 46 (4) of the *Act*, such that it may have sufficiently rendered the Notice as having no effect.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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. 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, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, 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

The landlord's application is dismissed 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 21, 2017

Residential Tenancy Branch