



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPRM-DR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park 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 on January 27, 2018, the landlord's agent "KF" served the tenant with the Notice of Direct Request Proceeding via registered mail to an address which is different than the address of the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Proof of Service form also establishes that the service was witnessed by "KK" and a signature for "KK" is included on the form.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 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 manufactured home park tenancy agreement which was signed by the landlord's agent and the tenant on October 01, 1991;

- 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 \$906.00 for outstanding rent, comprised of the balance of unpaid rent owed for December 2017 and January 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 02, 2018, which the landlord states was served to the tenant on January 03, 2018, for \$906.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 12, 2018; and
- A copy of the Proof of Service of the Notice asserting that the landlord's agent "KF" served the Notice to the tenant on January 03, 2018, by way of leaving the Notice with an adult who apparently lives with the tenant.

The Notice restates section 39(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 relevant documentary evidence provided by the landlord. Section 82 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 82 provides, in part, as follows:

Special rules for certain documents

82 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 48 [*order of possession for the landlord*], 49 [*application for order ending tenancy early*] or 49.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*].

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 82 of the *Act*. Section 82 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the Direct Request Proceeding documents were served by way of registered mail to an address that is not the same as the address of the rental unit. If the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the tenant, within the narrow scope of the Direct Request process, the landlord bears the burden to provide proof to support any such agreement. I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided by the landlord, other than on the Application for Dispute Resolution by Direct

Request, and there is no evidence before me to demonstrate that the parties agreed that the landlord may serve the documents to the tenant via an alternate address that differs from the address of the rental unit.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 82(1)(e) or 82(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the documents via registered mail to an address that differs from the address of the rental unit and one that is not established as an alternate service address for the tenant, the landlord has not served the Notice of Direct Request Proceeding in accordance with the *Act*. I find that the landlord has not sufficiently established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39, and further 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.

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, and the correct amount of rent due with respect to the tenancy.

“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 may not be 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:

(iv) the amount of rent payable for a specified period

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 amount of rent owed with respect to the tenancy.

As previously indicated, 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.

I find that the tenancy agreement provided by the landlord brings into question the correct amount of monthly rent owed by the tenant and further brings into question whether the Notice

for unpaid rent provided to the tenant alerted the tenant to an incorrect amount of rent owing. The landlord has not provided any evidentiary information to clarify the discrepancy with respect to the actual monthly rent owed under this tenancy.

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

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I dismiss the landlord's application for a monetary Order 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 *Manufactured Home Park Tenancy Act*.

Dated: January 31, 2018

Residential Tenancy Branch