



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 applicant for an Order of Possession based on unpaid rent and a Monetary Order.

The applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 05, 2018, the applicant’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The applicant 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. The Proof of Service form also establishes that the service was witnessed by “SH” and a signature for “SH” is included on the form.

Based on the written submissions of the applicant, 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 January 10, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the applicant entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the applicant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The applicant 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's agent "SC" and the tenant on February 26, 2016, indicating a monthly rent of \$2,400.00, due on the first day of the month for a tenancy commencing on March 01, 2016;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the applicant establishes a monetary claim in the amount of \$2,400.00 for outstanding rent, comprised of the balance of unpaid rent due by December 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 16, 2017, which the applicant states was served to the tenant on December 16, 2017, for \$2,400.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 26, 2017; and
- A copy of the Proof of Service of the Notice showing that the applicant served the Notice to the tenant by way of posting it to the door of the rental unit on December 16, 2017. The Proof of Service form establishes that the service was witnessed by "WC" and a signature for "WC" 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

I have reviewed all relevant documentary evidence provided by the applicant. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on December 19, 2017, three days after its posting.

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.

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. 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:

(b) the correct legal names of the landlord and tenant;

I find that the copy of the tenancy agreement provided by the applicant does not include the full, correct legal name of the landlord, as the tenancy agreement does not provide any information to identify the landlord. The tenancy agreement includes only the name of the tenant and a signature and name of an individual bearing the initials “SC”, who is identified as being an agent for the landlord. However, the tenancy agreement does not provide any information to identify the name of the landlord.

I find that the evidentiary material provided by the applicant brings into question whether the correct landlord is identified on the application for dispute resolution. The landlord listed on the application is an individual, who will be identified as bearing the initials “LY”. However, “LY” is not identified as being the landlord on the tenancy agreement; rather, I find that the tenancy agreement does not establish the name or identity of the landlord. Instead, the tenancy agreement only provides that an individual, who will be identified as bearing the initials “SC”, is acting on behalf of an unidentified landlord. The tenancy agreement does not establish that “SC” is the landlord, rather, it only demonstrates that she is an agent.

I find that the applicant has not demonstrated whether the individual listed as being the landlord on the application form, “LY”, entered into a tenancy agreement with the individual identified as the respondent tenant on the application form and in the tenancy agreement.

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 identified above, that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly identified on both the application form and on the tenancy agreement. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material or testimony 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 applicant 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 applicant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicant'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: January 15, 2018

Residential Tenancy Branch