



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

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 02, 2018, Landlord J.D. personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 02, 2018, the day it was personally handed to the tenant.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords on November 01, 2017 and the tenant, indicating a monthly rent of \$1,850.00, due on the 15th day of each month for a tenancy commencing on November 15, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 16, 2017 for \$925.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the tenant 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 26, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to the tenant at 6:40 p.m. on December 20, 2017; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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 of the tenant to participate, there is a much higher burden placed on the landlord 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.

The onus is on the landlord to present evidentiary material that 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 a 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.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application by Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:
registered mail;
in person, with a witness verifying it was served; or
by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:
registered mail receipt and printed tracking report;
a receipt signed by the tenant, stating they took hand delivery of the document(s); or
a witness statement that they saw the landlord deliver the document(s).

I find that on the second page of the Proof of Service Notice to End Tenancy, the witness statement to confirm service of the 10 Day Notice to the tenant has not been signed.

I find that as I not able to confirm service of the 10 Day Notice to the tenant, I dismiss the landlords' Application for an Order of Possession and Monetary Order based on the 10 Day Notice with leave to reapply.

As the landlords were unsuccessful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 10 Day Notice with leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' application for an Order for the recovery of the filing fee 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 *Act*.

Dated: January 04, 2018

Residential Tenancy Branch