



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 on January 17, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. As the landlord did not provide a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing, I am unable to confirm service of the Direct Request Proceeding documents.

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 a residential tenancy agreement which was signed by the landlord and the tenant on July 27, 2016, indicating a monthly rent of \$900.00, due on the first day of each month for a tenancy commencing on August 01, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$900.00 to the current monthly rent amount of \$933.30;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 05, 2018 for \$933.30 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 January 15, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left in the tenant's mail box or mail slot at 1:00 p.m. on January 05, 2018; 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 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.

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 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding, with all the required inclusions, as indicated on the Notice as per section 89 of the *Act*.

I find that the landlord did not prove service of the Notice by Canada Post registered mail as the landlord did not provide a copy of the Canada Post Registered Mail Receipt, including tracking number, which is a requirement of the Direct Request Proceeding. In that regard, Policy Guideline # 39, section C.3., sets out the following

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served. **The landlord may prove service of one of these methods of service as described in the table above.**”

The method in which to prove service under Policy Guideline #39 for registered mail is as follows: **Canada Post registered mail receipt showing the date and time of purchase and printed tracking report.**

Further, the Proof of Service Notice of Direct Request Proceeding, Form #RTB-44, under the heading of "Method of Service," sets out beside the selection for registered mail the following: (attach a completed Canada Post Registered Mail Receipt, including tracking number on a separate page).

As I am not able to confirm service of the Notice of Direct Request Proceeding, I dismiss the landlord's application for an Order of Possession and Monetary Order based on the 10 Day Notice, with leave to reapply.

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

Conclusion

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

I dismiss the landlord's application for a Monetary Order for unpaid rent and utilities with leave to reapply.

I dismiss the landlord's 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 19, 2018

Residential Tenancy Branch