



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SRLAN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 17, 2018, the landlord’s agent “RL” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 forms establish that the service was witnessed by “MQ” and a signature for “MQ” is included on the forms.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 22, 2018, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement indicating a monthly rent of \$830.00 for a tenancy commencing on October 15, 2013;
- Copies of “Notice of Rent Increase” forms provided to the tenants during the course of the tenancy;
- 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 \$900.00 for outstanding rent, comprised of the balance of unpaid rent due by February 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 03, 2018, which the landlord states was served to the tenants on February 03, 2018, for \$900.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 13, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord’s agent “MQ” served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants’ residence on February 03, 2018. The Proof of Service form establishes that the service was witnessed by “RQ” and a signature for “RQ” is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants 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.

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.

The *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

12 (1) A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

I find that the landlord has provided a copy of the tenancy agreement which does not adhere to the requirements for tenancy agreements as prescribed in section 12 of the *Residential Tenancy Regulation*. The tenancy agreement provided by the landlord does not include the signatures of any of the parties listed on the first page of the tenancy agreement to demonstrate that the parties to the agreement endorsed the terms of the tenancy agreement by providing their respective signatures on the agreement to enter into a tenancy agreement.

In the absence of a complete tenancy agreement which establishes that the parties endorsed the terms of the tenancy agreement by the signing the agreement, I find that the landlord’s application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process. Based on the foregoing, I dismiss the landlord’s application for an Order of Possession and a monetary Order with leave to reapply.

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.

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.

As the landlord was not successful 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 with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application 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 *Residential Tenancy Act*.

Dated: February 20, 2018

Residential Tenancy Branch