



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 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 March 06, 2018, the landlord’s agent “MH” served the respondent with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit. The Proof of Service form establishes that the service was witnessed by “VH” and a signature for “VH” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the respondent has been deemed served with the Direct Request Proceeding documents on March 09, 2018, three days after their posting.

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’s agent and the tenant on February 01, 2017, indicating a monthly rent of

\$1,200.00, due on the first day of the month for a tenancy commencing on February 02, 2017;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$750.00 for unpaid rent due by February 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 04, 2018, which the landlord states was served to the tenant on February 04, 2018, for \$750.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 14, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MH" served the Notice to the tenant by way of posting it to the door of the rental unit at 1:10 PM on February 04, 2018. The Proof of Service form establishes that the service was witnessed by "VH" and a signature for "VH" 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

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.

"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;

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.

I find that the evidentiary material provided by the landlord brings into question whether the correct tenant is identified on the application for dispute resolution. The tenant listed on the application for dispute resolution is a person, who will be identified as bearing the initials "JW", and is different than the entity listed as the tenant on the tenancy agreement. The tenant listed on the tenancy agreement is an entity, which, for the purpose of this decision, will be identified as bearing the initials "NICRP". The tenancy agreement does not provide that "JW" entered into a tenancy agreement with the landlord, as neither the name nor signature for "JW" appears on the tenancy agreement to demonstrate that "JW" endorsed the terms of the tenancy agreement to enter into a tenancy with the landlord.

The tenancy agreement demonstrates that "NICRP" was listed on the tenancy agreement as the tenant, and that "NICRP" endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the landlord identified on the tenancy agreement and on the application for dispute resolution. The supporting documents included with this application, such as the Notice to End Tenancy, also identify the tenant as being "NICRP."

I find that the landlord has not demonstrated that the tenant listed on the application form, "JW", entered into a tenancy agreement with the landlord. Based on the foregoing, as the landlord has not demonstrated that it entered into a tenancy agreement with "JW", I am unable to proceed with this application against the party "JW".

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 that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the

tenant 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 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, and the requirements for service of documents, as prescribed in Section 89 of the *Act*, 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: March 08, 2018

Residential Tenancy Branch