



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEIDNER INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on March 09, 2018, at 11:00 AM, the landlord’s agent “SM” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “SB” and a signature for “SB” is included on the form.

Based on the written submissions of the landlord, 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 March 09, 2018.

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 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 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 and the tenant on March 14, 2016, indicating a monthly rent of \$1,195.00, due on the first day of each month for a tenancy commencing on April 01, 2016;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 06, 2018, which the landlord states was served to the tenant on February 06, 2018, for \$1,195.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 20, 2018; and
- A copy of the Proof of Service of the Notice on which the landlord's agent "SM" asserts that the Notice was served by way of posting it to the door of the rental unit at 3:00 PM on February 06, 2018. The Proof of Service form establishes that the service was witnessed by "SB" and a signature for "SB" 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. Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, and the details agreed upon by the parties to the agreement, such as the correct address of the rental unit.

I find that the evidentiary material provided by the applicant landlord brings into question whether the address for the rental unit under dispute, identified as the dispute address on the Application for Dispute Resolution by Direct Request, is the same rental unit identified on the tenancy agreement endorsed by the landlord and the tenant. The address of the rental unit identified on the tenancy agreement is not the same address provided on the Application for Dispute Resolution by Direct Request, as the street number of the address differs. The address for the rental unit is not consistently established on the documents provided as part of this application. The tenancy agreement and Notice provided to the tenant contain the same address for the rental unit, which differs from the address as it appears on the Proof of Service of the Notice form and the Application for Dispute Resolution by Direct Request.

As the landlord has attested that the Notice was served by way of posting it to the door of the rental unit, the inconsistency with which the address of the rental unit is depicted gives rise to the question of whether the Notice was posted to a premises bearing an address that differs from the address of the rental unit as it appears on the tenancy agreement.

As previously indicated, 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. I find that the application before me contains deficiencies that cannot be clarified by way of the Direct Request Proceeding, as the application brings into question whether the landlord has demonstrated that the parties entered into and endorsed a tenancy agreement which correctly establishes the address of the rental unit.

The documents included with this application demonstrate that the address of the rental unit is not consistently identified. The deficiency identified with respect to the landlord's application cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies. Therefore, I dismiss the landlord's application for an Order of Possession 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 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 16, 2018

Residential Tenancy Branch