



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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 applicant for an Order of Possession based on unpaid rent.

The applicant submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 06, 2018, the applicant served each of the above-named tenants with the Notice of Direct Request Proceeding by way of posting a copy for each tenant to the door of the rental unit. The Proof of Service forms establish that the service was witnessed by an individual bearing the initials “DM” and a signature for “DM” is included on the forms.

Based on the written submissions of the applicant, 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 March 09, 2018, three days after their posting.

Issue(s) to be Decided

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

Background and Evidence

The applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant “MB” on April 01, 2017, indicating a monthly rent of \$1,450.00 due on the first day of the month for a tenancy commencing on April 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the applicant establishes a monetary claim in the amount of

\$1,425.00 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 12, 2018, which the applicant states was served to the tenants on February 12, 2018, for \$1,450.00 in unpaid rent due on February 01, 2017, with a stated effective vacancy date of February 23, 2018;
- A copy of the Proof of Service of the Notice asserting that the applicant served the Notice to the tenants by way of personal service via hand-delivery to the tenant "KQ" on February 12, 2018. The Proof of Service form asserts that the service was witnessed by "DW" and a signature for "DW" 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 applicant 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 landlords 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.

I have reviewed all documentary evidence provided by the applicant. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of the Notice to End Tenancy" form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

C. PROOF OF SERVICE

C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose. Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

On the Proof of Service of the Notice to End Tenancy form, the applicant contends that the he served the Notice to End Tenancy to the tenants by way of personal service via hand-delivery. The applicant contends that the service was witnessed by "DW" and a signature for "DW" is included on the form.

However, within the Direct Request process, the person serving the Notice to End Tenancy must provide a name and signature on the Proof of Service of the Notice to End Tenancy form. The Proof of Service of the Notice to End Tenancy form serves to allow the person serving the Notice to End Tenancy to provide a written attestation to confirm service of the Notice.

I find that the form submitted by the applicant shows that the person serving the Notice did not provide a name signature on the second page of the form in the field where service of the Notice to End Tenancy is to be confirmed. Based on the foregoing, I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process.

I find that the evidentiary material provided by the applicant brings into question whether the correct landlord is identified on the Application for Dispute Resolution by Direct Request. The landlord listed on the application form is an individual, who will be identified as bearing the initials "JL", and is different than the individuals listed as the landlords on the tenancy agreement. The landlords listed on the tenancy agreement are individuals, who, for the purpose of this decision, will be identified as bearing the initials "CN" and "AN".

The tenancy agreement demonstrates that "CN" and "AN" were listed on the tenancy agreement as the landlords, and that they endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the tenants identified on the tenancy agreement and on the application for dispute resolution.

I find that the applicant has not demonstrated whether the landlord listed on the application form, "JL", inherited the tenancy agreement from the landlords listed on the tenancy agreement, or whether the applicant "JL" has authorization to act as an agent for the landlords listed on the tenancy agreement. I further find that the applicant "JL" has not demonstrated that he entered into a tenancy agreement with the individuals identified as the respondent tenants on the

application form, and has not provided any evidentiary material to demonstrate that he purchased and took ownership of the premises which comprises the rental unit, and, by extension, that he inherited the tenancy agreement from the original landlords.

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.

Based on the foregoing, I dismiss the applicant's application for an Order of Possession with leave to reapply.

It remains open to the applicant 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 applicant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

Conclusion

I dismiss the applicant's application with 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 14, 2018

Residential Tenancy Branch