



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL 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 for unpaid rent.

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 that such evidentiary material 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.

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 the tenancy agreement which was signed by the landlord and both tenants on September 14, 2017, indicating a monthly rent of \$1900.00, payable on the first day of the month, for a tenancy commencing October 1, 2017;
- A copy of a rental agreement amendment signed October 20, 2017 indicating a monthly rental decrease of \$50.00, for a new monthly rent of \$1850.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to both tenants dated March 2, 2018 and sent to one tenant by registered mail on March 3, 2018, with a stated vacancy of March 12, 2018 for \$2850.00 in unpaid rent;
- A copy of a Proof of Service for Notice to End Tenancy indicating service on March 3, 2018 by registered mail, with a copy of the registered mail receipt;
- A copy of a Direct Request Worksheet indicating rent owing for February 2018 in the amount of \$1850.00, rent owing for March 2018 in the amount \$1850.00 with a partial payment of \$850.00 paid on March 1, 2018; and
- A copy of two additional Proof of Service for Notice to End Tenancy forms (one for each tenant), indicating service on the 19th of March 2018 by registered mail, with registered mail receipts included.

Analysis

Section 59 of the *Act* provides the following requirements regarding the Application for Dispute Resolution:

59 (1) [Repealed 2006-35-83.]

(2) An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), **a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.**

I find that the Notice of Service for the dispute resolution proceeding has not been proven with the evidence provided as the Proof of Service of the Notice of Direct Request Proceeding form was not included. Although the landlord submitted three Proof of Service of Notice to End Tenancy forms (RTB-34), there is no Proof of Service of the Notice of Direct Request Proceeding form (RTB-44) demonstrating service of the dispute resolution proceeding and applicable supporting documents on both tenants within three days of the application. As such, I find that the Application for Dispute Resolution is incomplete, and for this reason, I dismiss the landlord's application for an Order of Possession and a Monetary Order with leave to reapply.

Conclusion

The landlord's application for an Order of Possession and a Monetary Order is dismissed 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 28, 2018

Residential Tenancy Branch