



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 also applied for the filing fee.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the Landlord sent the Tenant O.F. the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant O.F. has been deemed served with the Direct Request Proceeding documents on March 21, 2018, the fifth day after their registered mailing.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the Landlord sent the Tenant S.F. the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant S.F. has been deemed served with the Direct Request Proceeding documents on March 21, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

3. 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 signed copy of a residential tenancy agreement, indicating a monthly rent of \$1,570, due on the first day of each month for a tenancy commencing on September 15, 2015. The Landlord and Tenant O.F. signed the tenancy agreement but it is not clear if Tenant S.F. signed the tenancy agreement.
- A signed copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 2, 2018 for \$1,615.00 in unpaid rent. The 10 Day Notice provides that the Tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of March 12, 2018;
- A copy of a Proof of Service Notice to End Tenancy (Proof of Service) form which indicates that the 10 Day Notice was left in the mail box or mail slot at the Tenants' residence at 5:00 p.m. on March 2, 2018. A third party witness was listed but did not sign the Proof of Service form. The third party witness statement on the Proof of Service form indicated that the third party witnessed the Landlord attach the 10 Day Notice to the door or other conspicuous place.
- 2 photographs depicting the 10 Day Notice being left in the mail slot of a green door.
- A copy of a Direct Request Worksheet (Worksheet) showing the monthly breakdown of rent owed. The Worksheet indicates that \$1,615.00 is owed for the month of March 2018. No partial payments have been made.

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 of 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 that they served the Tenants with the 10 Day Notice as per sections 71(2) (a) and 88 of the *Act*.

Director's orders: delivery and service of documents

71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service prescribed in the regulations.

As per section 88 of the Act, a Landlord is permitted to serve a 10 Day Notice by leaving a copy in the mail box or mail slot at the Tenants' residence but due to the *ex parte* nature of the proceedings, the Landlord must prove that the service took place. On the Proof of Service form the Landlord did not have a witness sign and affirm that they saw the Landlord leave a copy of the 10 Day Notice in the mail box or mail slot at the Tenants' residence. In addition, the witness statement section of the Proof of Service form listed a different method of service than that indicated by the Landlord. The Witness statement section stated that the Landlord posted the 10 Day Notice to the door and the Landlord indicated that he left a copy in the mail box or mail slot at the Tenants' residence. I have taken into account the photographic evidence showing the 10 Day Notice being left in a mail slot but I find that I am not able to confirm service of the 10 Day Notice to the Tenants', which is a requirement of the Direct Request process. For this reason, I dismiss the Landlord's application with leave to reapply.

In addition, I note that the tenancy agreement indicates a monthly rent of \$1,570.00 but the amount of rent does not match the amount of rent being claimed on the 10 Day Notice, that being \$1,615.00. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent; or the Monetary Order Worksheet must clearly show any additional months for which the tenant still owes rent.

Conclusion

I order that the Landlord's application for a Monetary Order for unpaid rent and an Order of Possession 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