



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 Landlords for an Order of Possession based on unpaid rent and a Monetary Order.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*?

Are the Landlords entitled to monetary compensation for unpaid rent pursuant to Section 67 of the *Act*?

Are the Landlords entitled to recover the filing fee for this application pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Tenant on March 23, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on April 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), dated March 04, 2018, for \$800.00 in unpaid rent. The 10 Day Notice provides that the Tenant 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 11, 2018, corrected to March 14, 2018;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the Tenant at 5:00pm on March 04, 2018; and
- A Direct Request Worksheet indicating the unpaid rent for March 2018 of \$800.00.

The Landlords did not submit a Proof of Service of Direct Request Proceeding. Although there was a document titled Proof of Service Notice of Direct Request Proceeding in the application, the submitted document was another copy of the Proof of Service Notice to End Tenancy form.

Analysis

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 referred to a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the Landlord must prove they served the Tenant the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service by either leaving a copy with the person, sending a copy by registered mail to the address at which the person resides, leaving a copy with an adult who apparently resides with the Tenant; or attaching a copy to the door or other conspicuous place at the address at which the Tenant resides.

I find that there has been no evidence submitted to prove that the Landlords have served the Notice of Direct Request Proceeding to the Tenant and as a result, the Landlords' application for an Order of Possession and a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the Landlord was not successful in this application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Landlords' application for an Order of Possession and a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the Landlord's application to recover the 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 23, 2018

Residential Tenancy Branch