



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 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 Proof of Service of the Notice of Direct Request Proceeding which declares that on March 22, 2018 at 7 a.m. the landlord hand delivered the Notice of Direct Request Proceeding to the Tenant.

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 \$1,200, due on the first day of each month for a tenancy commencing on October 15, 2017;

- A signed copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 18, 2018 for \$1,200.00 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 February 28, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was hand delivered to the Tenant at 5:15 p.m. on February 18, 2018. This service was not witnessed by a third party and the Tenant did not fill out the hand delivery receipt portion of the Proof of Service Notice to End Tenancy form;
- A copy of a Direct Request Worksheet showing the monthly breakdown of rent owed for February and March 2018 as well as recording a partial payment of rental arrears on approximately February 28, 2018 in the amount of \$400.00. The worksheet indicates a total outstanding balance of \$2,000.00; and
- A copy of a signed agreement between the Landlord and the Tenant stating that the eviction notice dated February 18, 2018 is extended provided that the Tenant make a payment in the amount of \$1,800.00 no later than March 10, 2018 and a second payment in the amount of \$600.00 on March 23, 2018.

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 Tenant 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 with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. On the Proof of Service Notice of Direct Request Proceeding, I find that there is no witness signature of a person who witnessed the Notice of Direct Request Proceeding being hand delivered to the Tenant to confirm service of the documents to the Tenant. I find that I am not able to confirm service of the Notice of Direct Request to the Tenant, which is a requirement of the Direct Request process.

In addition, the Landlord must prove that they served the Tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy. A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

- registered mail;
- **in person, with a witness verifying it was served;** or
- by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).**

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the Tenant or a signature of the person who received the 10 Day notice to confirm service.

As I am not able to confirm service of the Notice of Direct Request proceeding or service of the 10 Day Notice to the Tenant, which are requirements of the Direct Request proceeding, I dismiss the Landlord's application with leave to reapply.

Conclusion

I dismiss the Landlord'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 28, 2018

Residential Tenancy Branch