



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's agent submitted two separate signed Proof of Service of the Notice of Direct Request Proceeding documents which declare that on March 24, 2018, the landlord's agent sent to each individual tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord's agent provided a copy of the Canada Post registered mail customer receipt containing the tracking numbers to confirm these two mailings. Based on the written submissions of the landlord's agent and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on March 29, 2018, the fifth day after their registered mailing.

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's agent submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the landlord's agent and the tenants on September 27, 2016, indicating a monthly rent of \$1,350.00, due on the first day of each month for a tenancy commencing on October 15, 2016.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 9, 2018 for \$1,545.00 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 20, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 12:30 p.m. on March 9, 2018. In the "Witness statement" section of the form, the name and signature of a witness is provided to confirm that the landlord's agent served the tenants with the 10 Day Notice by posting it on the door of the rental unit on March 9, 2018. However, the date of signing by the landlord's agent and the witness is noted as March 3, 2018 on the form, which is several days prior to the 10 Day Notice being served; and
- A Direct Request Worksheet and tenants' account transaction ledger detailing rent claimed and paid over the past several months. The Direct Request Worksheet shows that on February 21, 2018, the tenant paid \$1,155.00 of the \$1,350.00 in rent owing for the month of February 2018, leaving \$195.00 owing, and that no rent was paid for March 2018. The tenants' account transaction ledger covers the time period between January 1, 2018 and March 15, 2018. The transaction ledger shows that \$225.00 was a carried forward "Previous Balance" from the period prior to January 1, 2018 and no details regarding the origin of this amount are provided on the ledger. According to the ledger, in January 2018 the tenants paid \$1,380.00 towards the cumulative rent owing in two payments: 1) \$680.00 on January 5, 2018 and 2) \$700.00 on January 19, 2018. Further to this, according to the ledger, the tenants paid the full \$1,350.00 in rent owing for the month of February on February 21, 2018, and that no rent was paid for March 2018.

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 found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with Sections 88 and 90 of the *Act*.

The Proof of Service of the Notice to End Tenancy form requires confirmation of the method of service of the 10 Day Notice. In the "Witness statement" section of the Proof of Service Notice to End Tenancy form submitted by the landlord's agent, I find that the date of signing by the landlord's agent and the witness is noted as March 3, 2018, which is several days prior to the stated date of service of the 10 Day Notice on March 9, 2018. The result of this error in date renders the confirmation of service unclear.

Due to this deficiency in the documentary evidence provided by the landlord's agent, I am not able to confirm service of the 10 Day Notice, which is a requirement of the Direct Request Process.

Further, I find that the landlord has submitted conflicting and insufficient evidence regarding the additional \$195.00 in "arrears" owed noted on the 10 Day Notice. There is no information provided as to the nature of these arrears or in what time period in the tenancy they were incurred. The evidence submitted by the landlord **only covers the time period** between January 1, 2018 and March 15, 2018, and **during this time period** the tenants account transaction ledger shows that only rent for the month of March 2018 was unpaid, in the amount of \$1,350.00.

Conclusion

Based on the above, I dismiss the landlord's 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: April 5, 2018

Residential Tenancy Branch