



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 submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 27, 2018, the landlord hand delivered the Notice of Direct Request Proceeding to “JK”. The landlord had JK sign to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 27, 2018.

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 a residential tenancy agreement which was signed by the landlord and the tenant on March 1, 2018, indicating a monthly rent of \$3,500.00, due on the first day of each month for a tenancy commencing on March 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 20, 2018 for \$3,500.00 in unpaid rent that was due on March 1, 2018. 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 30, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was hand delivered to JK, an adult that lives with the tenant, at 2:30 PM on March 20, 2018. The landlord also had JK sign to confirm service; and
- A Direct Request Worksheet showing the rent owing of \$3,500.00 for the month of March 2018.

Analysis

Direct Request proceedings are *ex parte* proceedings whereby the opposing party is not invited to participate in the hearing or make any submissions. Without an ability for the tenant to participate, there is a much higher burden placed on the landlord in these types of proceedings, as opposed to 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.

Furthermore, in these types of proceedings, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria. 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. Alternatively, the application may be dismissed.

I have reviewed all documentary evidence and I find it important to note that the 10 Day Notice to End Tenancy does not identify the tenant that the notice is being served to.

Without identifying to who the notice is to be served upon, I find that rendering a decision absent of this critical piece of information would not be consistent with the principles of administrative fairness. Therefore, I find that as the 10 Day Notice does not properly identify who the notice was to be served upon, it is set aside and of no effect.

As the landlord's application for an Order of Possession arises from a 10 Day Notice that has been set aside, I dismiss the landlord's application for an Order of Possession without leave to reapply. The landlord may wish to serve a new 10 Day Notice to the tenant that is correctly and fully completed.

Conclusion

I dismiss the landlord's application for an Order of Possession 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 3, 2018

Residential Tenancy Branch