



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

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 Proof of Service of the Notice of Direct Request Proceeding which declares that on April 5, 2018, the landlord served the tenant a Notice of Direct Request Proceeding by sending by way of registered mail to the rental unit.

Issues 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:

- (1) a copy of a residential tenancy agreement, signed by both parties on May 11, 2017, indicating a monthly rent of \$1,200.00 and a parking fee of \$30.00, due on the first day of the month for a tenancy commencing June 1, 2017;
- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 6, 2018, for \$1,230.00 in unpaid rent. The 10 Day Notice provided that the tenant had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on the stated effective vacancy date of March 19, 2018;
- (3) a copy of a witnessed Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was attached to the tenant’s door on March 6, 2018 at 11:15 AM;
- (4) a Direct Request Worksheet showing the rent owing during the relevant portion of the tenancy;
- (5) a copy of the landlord’s Statement of Account; and,
- (6) a copy of a Proof of Service Notice of Direct Request Proceeding, served by the landlord on the tenant on April 5, 2018, by way of registered mail.

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.

Landlords who apply for dispute resolution by way of a direct request must prove service of the Notice of Direct Request Proceeding. A tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, thus “it is essential that the landlord provide substantive proof of service” (Residential Tenancy Policy Guideline 39 – Direct Requests, page 2).

In reviewing the Proof of Service Notice of Direct Request Proceeding, I note that the method of service is indicated as registered mail. After the words “Registered Mail” is the statement “attach a completed Canada Post Registered Mail Receipt, including tracking number on a separate page”. Also, at the top of the Proof of Service Notice of

Direct Request Proceeding there is the instruction, in bold: **“This must be completed and uploaded to <https://tenancydispute.gov.bc.ca/DisputeAccess> with registered mail receipts, *if applicable*, to continue with the Direct Request Proceeding”**.

The landlord has not submitted into evidence copies of registered mail receipts, nor have they provided a copy of a registered mail tracking number as required. Without this evidence, I am unable to find that the landlord has provided clear proof of service of the Notice of Direct Request Proceeding. This leads me to order that this matter be dismissed, with leave to reapply.

Conclusion

I order that the landlord's application 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: April 06, 2018

Residential Tenancy Branch