



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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.

Issue

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

Background and Evidence

The Landlords submitted the following evidentiary material:

1. a copy of a residential tenancy agreement (the “tenancy agreement”) which was signed by the Landlord “C.G.” on November 27, 2017 and signed by the Tenant on December 8, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing December 1, 2017 and ending on December 1, 2018;
2. a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 29, 2018, for \$1,600.00 in unpaid rent due 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 April 8, 2018;
3. a copy of a witnessed Proof of Service Notice to End Tenancy which indicates that the 10 Day Notice was hand delivered to the Tenant on March 29, 2018;

4. a Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy; and,
5. a copy of a Proof of Service Notice of Direct Request Proceeding (the “Proof of Service”) showing that the Landlords’ agent served the Notice of Direct Request Proceeding to the Tenant by way of slipping the Notice of Direct Request Proceeding under the door of the rental unit on April 10, 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 landlord 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 and all required documents pertaining to the direct request process, in accordance with the Act and the Residential Tenancy Branch’s Policy Guidelines.

Sections 88 and 89 of the Act require that documents must be served in a prescribed manner. A Notice of Direct Request Proceeding may be served by leaving a copy with the Tenant, may be sent by registered mail, leaving it with someone who apparently resides with the tenant, or “by attaching a copy to a door or other conspicuous place at the address at which the tenant resides”. Failure to serve documents in a manner required by the Act invalidates service.

I have reviewed all documentary evidence provided by the Landlords. The Landlords’ agent “J.O.” indicated on the Proof of Service Notice of Direct Request Proceeding that they served a copy of the Notice of Direct Request Proceeding by “**Attaching a copy on the door or other noticeable place.**” The box next to this method is checked with an “X”. However, the agent then writes the phrase “*Slipped under the door*” in the section that requires the server to provide a “**Description of noticeable place where documents were attached.**” The information provided by the Landlords’ agent with respect to the manner in which the hearing documents were served clearly demonstrates that the documents were not attached to the door, nor were they attached to a noticeable place, as required under the service provisions of the Act. Rather, they

were slipped under the door, which is not a method of service permitted under section 89(2) of the Act. The Landlords have not provided any further details to demonstrate to my satisfaction that the documents were attached to a noticeable place.

Therefore, I find that the Landlords have not served the hearing documents in a manner approved by the Act, by attaching them to the door or other conspicuous place, or by serving them in another manner as permitted under section 89(2) of the Act. I dismiss the Landlords' application for an Order of Possession with leave to reapply.

Conclusion

I dismiss the Landlords' application for an Order of Possession 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 12, 2018

Residential Tenancy Branch