



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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/unpaid utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 20, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this 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 and unpaid utilities 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 November 08, 2017, indicating a monthly rent of \$945.00, due on the first day of each month for a tenancy commencing on December 01, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 03, 2018, for \$980.00 in unpaid rent and \$74.57 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 16, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on April 03, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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.

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 subsections 89 (1) and (2) of the *Act* which permit service "by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

I find that the tracking number provided by the landlord on the Proof of Service Notice of Direct Request Proceeding is for a package sent by Canada Post's Xpress Post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post's Online Tracking System shows that a signature was not required for the delivery of this Xpress Post mailing and, as such, it does not meet the definition of registered mail as defined under the *Act*.

Since I find that the landlord has not served the tenant with notice of this application in accordance with Section 89 of the *Act*, I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for an Order of Possession and a Monetary Order for unpaid rent and unpaid utilities is dismissed with leave to reapply.

The landlord's application to recover the filing fee paid for this application is dismissed 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 26, 2018

Residential Tenancy Branch