



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 applicants for an Order of Possession based on unpaid rent and a Monetary Order.

The applicants submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 08, 2018, the applicants served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The applicants provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on May 13, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

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

Are the applicants entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the applicants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement, indicating a monthly rent of \$1,500.00 due on the first day of each month for a tenancy commencing on December 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 17, 2018;
- A copy of the Proof of Service of the Notice form asserting that the Notice was served to the tenants by way of registered mail.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the applicant alleged that the tenants did not pay the rental arrears.

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 for 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 landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

I find that the evidentiary material provided by the applicants brings into question whether the correct landlord is identified on the Application for Dispute Resolution by Direct Request. The landlords listed on the application for dispute resolution are individuals, who will be identified as bearing the initials "GB" and "RB", and are different than the entity listed as the landlord on the tenancy agreement. The landlord listed on the tenancy agreement is an entity, which, for the purpose of this decision, will be identified as bearing the initials "AAL".

The tenancy agreement demonstrates that "AAL" was listed on the tenancy agreement as the landlord, and that "AAL" endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the tenants identified on the tenancy agreement and on the application for dispute resolution. "AAL" is identified on the tenancy agreement as being a managing agent for the owner of the property which comprises the rental unit, however, the owner of the property is not identified on the tenancy agreement.

I find that there is no evidentiary material provided to demonstrate that the applicants "GB" and "RB" are the owners for whom "AAL" is acting as agent for.

I further find that the applicants have not demonstrated whether the landlords listed on the application for dispute resolution, "GB" and "RB", inherited the tenancy agreement from the landlord listed on the tenancy agreement, or whether the applicants "GB" and "RB" have authorization to act as an agent for the landlord listed on the tenancy agreement. I further find that the applicants "GB" and "RB" have not demonstrated that they entered into a tenancy agreement with the individuals identified as the respondent tenants on the application for dispute resolution, and have not provided any evidentiary material to demonstrate that they may have purchased and took ownership of the premises which comprises the rental unit, and, by extension, that they inherited the tenancy agreement from the original landlord identified in the tenancy agreement.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the applicants' application for an Order of Possession and a Monetary Order with leave to reapply.

It remains open to the applicants to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the applicants may wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the applicants were not successful in this application, I find that the applicants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicants' application for an Order of Possession with leave to reapply.

I dismiss the applicants' application for a monetary Order with leave to reapply.

I dismiss the applicants' request to recover the \$100.00 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: May 16, 2018

Residential Tenancy Branch