Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EPIC 112TH AVENUE HOMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 31, 2018, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on June 05, 2018, the fifth day after their registered 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 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 29, 2018, indicating a monthly rent of $2,500.00, due on the first day of each month for a tenancy commencing on April 01, 2018;

- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of $2,800.00 for outstanding rent, comprised of the balance of unpaid rent owed by April 01, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 17, 2018, which the landlord states was served to the tenant on April 17, 2018, for $2,500.00 in unpaid rent due on April 01, 2018, with a stated effective vacancy date of April 26, 2018; and

- A copy of the Proof of Service of the Notice asserting that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on April 17, 2018. The Proof of Service form does not include the name and signature of a witness.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 have reviewed all documentary evidence provided by the landlord. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. In a Direct Request application, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act.* Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of the Notice to End Tenancy" form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act.* Policy Guideline 39 provides, in part, the following:

> C. PROOF OF SERVICE
> C.1. 10 DAY NOTICE TO END TENANCY
>
> The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.
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> Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.
>
> While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to confirm that the Notice to End Tenancy was served in accordance with the Act. On the first page of the Proof of Service of the Notice to End Tenancy form, the landlord has checked a box indicating that the Notice to End Tenancy was attached to the door of the rental unit. If service of the Notice was completed in this manner, the landlord must provide proof, such as a witness statement, including the name and signature of a witness, to confirm service of the Notice to End Tenancy.

On the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "Witness Statement", the form does not include the name and

signature of a witness to confirm that the service was carried out as attested by the landlord.

I find that the landlord is required to provide a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of a witness to confirm that the Notice to End Tenancy was served in accordance with the Act.

I find that the landlord has not demonstrated that service of the Notice to End Tenancy was witnessed and completed in accordance with the Act, nor has the landlord provided the name and signature of a witness on the Proof of Service of the Notice to End Tenancy form, as is required within the Direct Request process.

The Proof of Service of the Notice to End Tenancy form provided by the landlord does not satisfy the requirements under the Direct Request Process to prove that the tenant was served with the Notice in accordance with the Act, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the Notice to End Tenancy to the tenant, which is a requirement of the Direct Request process.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

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 landlord's application for an Order of Possession with leave to reapply.

It remains open to the landlord 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 landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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

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

I dismiss the landlord's 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: June 05, 2018

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Residential Tenancy Branch