Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 545263 BC LTD
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 signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on June 12, 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 17, 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 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:

- 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's agent and the tenant, indicating a monthly rent of $1,200.00, due on the first day of each month for a tenancy commencing on February 01, 2016;
- 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 May 23, 2018; and
- A copy of the Proof of Service of the Notice form.

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 landlord 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.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

> ***52*** *In order to be effective, a notice to end a tenancy must be in writing and must*
>
> *(a) be signed and dated by the landlord or tenant giving the notice,*
>
> *(b) give the address of the rental unit,*
>
> *(c) state the effective date of the notice,…and*
>
> *(e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and find that the Notice, dated May 23, 2018, does not adhere to the provisions of section 52 of the *Act*. There is an omission on the Notice, as under the section where the tenant is given a 10-day notice to vacate the rental unit, the address of the rental unit from which the tenant must move out of or vacate is not provided, as that section of the Notice has been left blank. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

In a participatory hearing it may be possible to amend certain deficiencies with respect to the Notice or to seek clarification from the parties, however, in the limited scope of the Direct Request process, the *Act* does not allow an adjudicator to input an address where none is provided on the Notice. Therefore, I find that the Notice is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the May 23, 2018 Notice, without leave to reapply. If the landlord determines that unpaid rent is an outstanding concern with respect to the tenancy, it remains open to the landlord to seek remedy by issuing a Notice to End Tenancy in accordance with the criteria set out in sections 46 and 52 of Act, if the landlord so wishes

Based on the foregoing, I dismiss the landlord's application for a monetary Order 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

I dismiss the landlord's application for an Order of Possession, based on the May 23, 2018 Notice, without leave to reapply.

The 10 Day Notice of May 23, 2018 is cancelled and of no force or effect.

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

I dismiss the landlord's application to recover the 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 20, 2018

Residential Tenancy Branch