



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 landlords (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 which declares that on July 27, 2018, the landlord’s agent served the respondent “CDI” with the Notice of Direct Request Proceeding documents by leaving the documents at the respondent’s residence with an adult who apparently resides with the respondent. The landlord states that the Notice of Direct Request Proceeding documents for the respondent “CDI” were served at the rental unit, by way of hand-delivery, to an individual identified as “MC”. The service was confirmed as the individual identified as “MC” acknowledged receipt of the Notice by signing the Proof of Service form. The service was also confirmed as the Proof of Service form establishes that the service was witnessed by the “AB” and a signature for “AB” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the respondent has been served with the Direct Request Proceeding documents on July 27, 2018.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding form for the respondent “DT” and has not established that respondent “DT” has been served the Notice of Direct Request Proceeding documents. Therefore, I dismiss the landlord’s application against the respondent “DT” with leave to reapply. I will hear the landlord’s application against the respondent “CDI” only.

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 a residential tenancy agreement;
- 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 June 22, 2018, which the landlord states was served to the respondents on June 27, 2018, for \$71,750.00 in unpaid rent due on June 01, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the respondent by way of personal service via hand-delivery on June 27, 2018.

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 provided by the landlord and find that the Notice, dated June 22, 2018, served to the respondents, does not adhere to the provisions of section 52 of the *Act*. The Notice does not include the effective date (the day when the tenant must move out of or vacate the site) of the Notice, therefore making the Notice incomplete. 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*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

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, within the limited scope of the Direct Request process, the *Act* does not allow an adjudicator to input an effective date of the Notice where none is provided on the Notice. Therefore, I find that the June 22, 2018 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 June 22, 2018 Notice, without leave to reapply.

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.

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.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the June 22, 2018 Notice, which the landlord asserts was served to the respondents on June 27, 2018, without leave to reapply.

The 10 Day Notice of June 22, 2018, which the landlord asserts was served to the respondents on June 27, 2018, is cancelled and is 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: August 07, 2018

Residential Tenancy Branch