



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 August 08, 2018, the landlord’s agent served the tenant “MT” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “MT” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “RJ” and a signature for “RJ” 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 tenant “MT” has been duly served with the Direct Request Proceeding documents on August 08, 2018.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 08, 2018, the landlord’s agent served the tenant “JT” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents for the tenant “JT” were served at the rental unit, by way of hand-delivery, to the co-tenant “MT”. The service was confirmed as the individual identified as “MT” 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 “RJ” and a signature for “RJ” 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 tenant “JT” has been duly served with the Direct Request Proceeding documents on August 08, 2018.

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, indicating a monthly rent of \$1,950.00 due on the first day of each month for a tenancy commencing on July 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 August 01, 2018, which the landlord states was served to the tenants on August 01, 2018, for \$1,950.00 in unpaid rent due on August 01, 2018, with a stated effective vacancy date of August 10, 2018;
- A copy of the Proof of Service of the Notice asserting that the landlord's agent served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JT" on August 01, 2018.

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 landlord 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 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.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue the Notice to the tenants with respect to unpaid rent owed for August 2018 would have been on the second day of the August 2018.

According to Direct Request Worksheet provided by the landlord, the landlord indicates that there is unpaid rent owed by August 01, 2018, for the month of August 2018. As the landlord issued the Notice on August 01, 2018, the same day on which the monthly rent was due, I find that the landlord has issued the Notice to End Tenancy to the tenants on a day earlier than permitted under section 46 of the *Act*.

Therefore, I find that the Notice to End Tenancy, dated August 01, 2018, is not in compliance with the provisions of section 46 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 August 01, 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 August 01, 2018 Notice, without leave to reapply.

The 10 Day Notice of August 01, 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 09, 2018

Residential Tenancy Branch