



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 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 August 17, 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 August 22, 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 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 July 31, 2018, which the landlord states was served to the tenant on August 01, 2018, for \$625.00 in unpaid rent due on August 01, 2018, with a stated effective vacancy date of August 11, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlord's agent served the Notice to the tenant by way of personal service via hand-delivery on August 01, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the 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

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on August 01, 2018.

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.

“Policy Guideline #39. Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution by way of the direct request process, a copy of the tenancy agreement. Section 12 of the *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

12 (1) A landlord must ensure that a tenancy agreement is

- (a) in writing,
- (b) signed and dated by both the landlord and the tenant,

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due. On the Application for Dispute Resolution by Direct Request, the landlord lists a respondent tenant, who, for the purpose of this decision, will be identified as “CB”. The same respondent tenant is also identified on the copy of the tenancy agreement included as part of this application.

However, on the last page of the tenancy agreement, only the signature for the landlord appears, and in the field where the tenant is to sign the agreement, the field has been left blank and does not include a signature for the tenant. I find that the tenancy agreement does not demonstrate that the individual identified as the respondent tenant on the application for dispute resolution, and identified on the first page of the tenancy agreement, endorsed the terms of the tenancy agreement as a tenant by providing her signature on the tenancy agreement to enter into a tenancy with the applicant landlord.

By extension then, I am unable to consider this application by way of the Direct Request process and issue a decision and orders against the respondent, as I cannot determine, within the limited scope of the Direct Request process, if the respondent entered into a tenancy agreement with the applicant landlord and endorsed the terms of the tenancy agreement included with this application.

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 first day on which the landlord could issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's first opportunity to issue the Notice to the tenant would have been on the second day of the month. As the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent on August 01, 2018, the same day on which the monthly rent was due for the month of August 2018, I find that the landlord has issued the Notice to the tenant on a day earlier than permitted under section 46 of the *Act*.

Therefore, I find that the 10 Day Notice to End Tenancy for Unpaid Rent dated July 31, 2018 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 July 31, 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 July 31, 2018 Notice, without leave to reapply.

The 10 Day Notice dated July 31, 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 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: August 21, 2018

Residential Tenancy Branch