



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENGEL AND VOLKERS WHISTLER
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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on September 28, 2018, the landlord personally served Tenant K.D.C. and Tenant K.B. the Notices of Direct Request Proceeding. The landlord had the tenants sign their respective Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant K.D.C. and Tenant K.B. have been duly served with the Direct Request Proceeding documents on September 28, 2018.

The landlord submitted a third signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 28, 2018, the landlord served Tenant S.M. the Notice of Direct Request Proceeding by handing the documents to Tenant K.D.C. The landlord had Tenant K.D.C. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant S.M. has been duly served with the Notice of Direct Request Proceeding documents on September 28, 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 which names a landlord who is not the applicant and was signed by the tenants on September 19, 2017, indicating a monthly rent of \$3,100.00, due on the first day of each month for a tenancy commencing on October 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 10, 2018, for \$3,100.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 21, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by one of the tenants and indicates that the 10 Day Notice was personally served to the tenants at 10:00 pm on September 25, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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 that such material does not lend itself to ambiguity or give rise to issues that may need 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 and I find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution, 10 Day Notice or any of the other documentation that has been submitted with the Application for Dispute Resolution.

I also note that the landlord has indicated in their application that the tenants were personally served the 10 Day Notice on September 10, 2018. However, the Proof of Service Notice to End Tenancy form that was signed by one of the tenants indicates that the 10 Day Notice was served on September 25, 2018. I find that I am not able to confirm the date of service of the 10 Day Notice to the tenants, which is a requirement of the Direct Request Proceeding.

As this is an ex parte proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancies listed above raise questions that cannot be answered within the purview of the Direct Request Process.

For this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed 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 and a Monetary Order for unpaid rent 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: October 04, 2018

Residential Tenancy Branch