



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 one signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 17, 2018, the landlord sent the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing a Tracking Number to confirm this mailing.

The Proof of Service of the Notice of Direct Request Proceeding also indicates personal service of the documents.

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*?

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 evidentiary material 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.

In this type of matter, the landlord must prove they served the tenants with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service “by sending a copy by registered mail to the address at which the person resides..” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

The landlord must also prove that they served each tenant with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. On the top of the Proof of Service of the Notice of Direct Request Proceeding, the wording reads as follows: “You must serve these documents to each respondent individually and complete a separate Proof of Service Notice of Direct Request Proceeding for each respondent.”

I find that the registered mail receipt submitted by the landlord shows that the landlord has placed both of the Notices of Direct Request Proceeding in the same envelope with multiple persons named.

The landlord has also indicated they served the tenants the Notice of Direct Request Proceeding in person. However, I find the landlord has provided two different names for the person who received the documents. I find that I am not able to confirm whether the documents were received by Tenant R.J. or by a roommate of the tenants.

I also find that I cannot confirm whether the documents served in person were a single package for Tenant R.J., a single package for Tenant A.D, or two separate packages, one for each tenant.

I find that I am not able to confirm service of the Notices of the Direct Request Proceeding to each of the parties individually as required by sections 71 and 89 of the *Act*.

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 19, 2018

Residential Tenancy Branch