



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 September 26, 2018, the landlord 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 October 01, 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 copy of a 10 Day Notice to End Tenancy for Unpaid Rent , dated September 04, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent, form #RTB-30, dated September 16, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant by way of posting it to the door of the rental unit on September 04, 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 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.

I have reviewed all documentary evidence provided by the landlord. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to

be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as formatted in the RTB-30 version, includes information with respect to the Direct Request process, such that the recipient of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) is alerted to information concerning the Direct Request process.

I find that the landlord has provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) dated September 16, 2018. However, as part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form (form RTB – 34) to prove that the Notice to End Tenancy was served to the tenant in accordance with the Act. I find that the landlord has not provided a completed Proof of Service of the Notice to End Tenancy form to prove that the Notice to End Tenancy, dated September 16, 2018, was served to the tenant in accordance with the Act.

I find that the landlord is required to provide a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of a witness to confirm that the Notice to End Tenancy dated September 16, 2018 was served to the tenant in accordance with the Act.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice to End Tenancy in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the Act.

I find that the landlord has not demonstrated that service of the Notice to End Tenancy, dated September 16, 2018, was witnessed and completed in accordance with the Act, nor has the landlord provided a completed Proof of Service of the Notice to End Tenancy form, which includes a name and signature of a witness to confirm service of the Notice dated September 16, 2018, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the Notice to End Tenancy dated September 16, 2018 to the tenant, which is a requirement of the Direct Request process.

The landlord has provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 04, 2018, which is an old version of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which does not include information with respect to the Direct Request process. I further find that by issuing an old version of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenant, the landlord has not adhered to the guidelines detailed in Residential Tenancy Policy Guideline # 39, which provides that the landlord must prove that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) if the landlord wishes to pursue an Order of Possession and a monetary Order by way of the Direct Request process.

The landlord has provided a completed Proof of Service of the Notice to End Tenancy form (form RTB – 34), which shows that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant by way of posting it to the door of the rental unit on September 04, 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 completed Proof of Service of the Notice to End Tenancy form (form RTB – 34) shows that a Notice to End Tenancy was served to the tenant on September 04, 2018, and the service date corresponds to the date of the old version of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which is also dated September 04, 2018. Therefore, I find that the landlord has only proven service of the 10 Day Notice to End Tenancy for Unpaid Rent, dated September 04, 2018, which is an old version of the 10 Day Notice to End Tenancy for Unpaid Rent.

Since the landlord has not proven service of the RTB-30 version of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 16, 2018, I find the landlord has not adhered to the provisions of the Direct Request process outlined in Policy Guideline #39, and therefore, cannot consider the landlord's application by way of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 with leave to reapply.

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: September 28, 2018

Residential Tenancy Branch