



Dispute Resolution Services

Page: 1

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 applicant for an Order of Possession based on unpaid rent and a monetary Order.

The applicant submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on September 22, 2018, the applicant’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The applicant provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on September 27, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the Applicant entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the Applicant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which listed the landlords as being individuals bearing the initials “NS” and “KS”. The tenancy agreement was signed by “NS” and “KS”, and signed by the tenants;
- 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 September 04, 2018; and
- A copy of the Proof of Service of the Notice 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 Applicant alleged that the tenant 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 find that the evidentiary material provided by the applicant brings into question whether the correct landlord is identified on the application for dispute resolution. The landlord

listed on the application for dispute resolution is an entity, which will be identified as bearing the initials "JRE", and is different than the individuals listed as the landlords on the tenancy agreement. The landlords listed on the tenancy agreement are individuals, who, for the purpose of this decision, will be identified as bearing the initials "NS" and "KS" respectively.

The tenancy agreement demonstrates that "NS" and "KS" were listed on the tenancy agreement as the landlords, and that "NS" and "KS" endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the tenants identified on the tenancy agreement and on the application for dispute resolution.

I find that the applicant has not demonstrated whether the landlord listed on the application form, "JRE", inherited the tenancy agreement from the landlords listed on the tenancy agreement, or whether the applicant "JRE" has authorization to act as an agent for the landlords listed on the tenancy agreement. I further find that the applicant "JRE" has not demonstrated that it entered into a tenancy agreement with either of the individuals identified as the respondent tenants on the application for dispute resolution.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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 that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly identified on both the application for dispute resolution and on the tenancy agreement. The documents included with this application indicate that the landlord identified on the tenancy agreement is not the same as the landlord listed on the other documents, such as the Application for Dispute Resolution and on the Notice issued to the tenants. 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 applicant's application for an Order of Possession and a Monetary order with leave to reapply.

It remains open to the applicant 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 applicant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicant's application for an Order of Possession with leave to reapply.

I dismiss the applicant's application for a monetary Order with leave to reapply.

I dismiss the applicant'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 26, 2018

Residential Tenancy Branch