



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on September 07, 2018, the landlord’s agent “DK” served the tenant with the Notice of Direct Request Proceeding by way of leaving the documents “inside the door on the floor”. The Proof of Service form establishes that the service was witnessed by “MH” and a signature for “MH” is included on the form.

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*?

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. Section 89 of the *Act* provides the approved methods by which documents comprising an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord contends that service of the documents was carried out in a manner consistent with the provisions of section 89 of *Act*, as they were attached to a noticeable place at the address at which the tenant resides. However, the landlord's statement on the form provides that the documents were left "inside the door on the floor".

The information provided by the landlord with respect to the manner in which the hearing documents were served demonstrates that the documents were not attached or affixed to the door, nor were they attached to a noticeable place, as required under the service provisions of the *Act*, but were instead left on the floor inside of the rental unit. The landlord has not provided any further details to demonstrate that the documents were **attached to a noticeable place** [emphasis added]. Rather, the landlord has provided a statement which can be interpreted to depict that the documents were not attached in accordance with the *Act*, as the landlord simply provides that the documents were left "inside the door on the floor", which does not demonstrate that they were attached, as required under the provisions of section 89(2) of the *Act*. Therefore, I find that the landlord has not served the hearing documents in a manner approved, by attaching them to the door or other conspicuous place, as provided under section 89(2) of the *Act*.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that the landlord has not served the Notice of Direct Request Proceeding containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, 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.

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.

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 10, 2018

Residential Tenancy Branch