



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPR-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 November 12, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding via posting the notice on the tenant’s door. The Proof of Service form also declares that the service was witnessed by “RL” and a signature for “RL” is included on the form.

However, for reasons set out below, I decline to find that the service of the Notice of Direct Request Proceeding was properly made.

Issues 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 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, with two pages of schedules, dated November 29, 2017 and signed by the landlord and the tenant, indicating a monthly rent of \$825.00, due on the first day of each month for a tenancy commencing on December 1, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed by November 1, 2018 in the amount of \$2,475.00, comprised of the balance of unpaid rent owed for the months encompassing the period of September 1, 2018 to November 1, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated September 24, 2018, which the landlord states was served to the tenant on September 24, 2018, for \$825.00 in unpaid rent due on September 1, 2018 plus a \$25 late payment fee, with a stated effective vacancy date of October 7, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on either September 9, 2018 or September 24, 2018 (there are conflicting dates on the form). 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 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.

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 of 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.

The onus is on the landlord to present evidentiary material that 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. I note the following discrepancies:

- 1) The tenancy agreement lists the rental unit number as “1301”, whereas the Notice, the proof of service forms, and the direct request worksheet list the rental unit number as “301”;
- 2) The name of the landlord on the tenancy agreement is not the same as the name of the Applicant, nor is it the same as the name of the landlord on the Notice; and
- 3) As noted above, the Proof of Service of the Notice form lists the date the Notice was served as September 9, 2018 and September 24, 2018.

Given the discrepancy in the unit number, I cannot find that the tenant was served with the Notice of Direct Request Proceeding, as the service attempt was made by way of posting to the door of unit “301”. The landlord has failed to adequately demonstrate that the tenant resides at that unit. Indeed, it would seem from the tenancy agreement that he resides at unit “1301”.

The landlord has failed to meet the higher evidentiary burden placed upon it in an *ex parte* application. The discrepancies in addresses are too significant to overlook, or remedy by way of an amendment in the absence of notice of these proceedings to the tenant.

I decline to grant the landlord the relief it seeks.

I dismiss the landlord's application, with leave to reapply on the condition that the landlord serves the tenant personally with the new Notice of Direct Request Proceeding. This will eliminate any doubt as to whether the tenant has notice of the proceeding. I will take this opportunity to remind the landlord of the requirement to obtain confirmation of personal service by way of a witness, or the tenant's signature.

If the landlord is unable to personally serve the tenant with the new Notice of Direct Request Proceeding, the landlord may apply to have this matter dealt with by way of a participatory hearing, and serve the tenant in accordance with the Act.

While I decline to make any findings as to the other discrepancies outlined above, I caution the landlord that, if this matter proceeds to a participatory hearing, absent a reasonable explanation the discrepancy of the name of the landlord between the Notice and the tenancy agreement the Notice may be found to be invalid.

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 as indicated above.

I dismiss the landlord's application to recover the filing fee, 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: November 16, 2018

Residential Tenancy Branch