



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 19, 2018, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy 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 landlord, 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 November 24, 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

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The landlord submitted the following evidentiary material:

- A blank Direct Request Worksheet.

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.

Residential Tenancy Policy Guideline 39, in part, reads:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- the written tenancy agreement;
- documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;
- the Direct Request Worksheet (form RTB-46) **setting out the amount of rent or utilities owing** which may be accompanied by supporting documents such as a rent ledger or receipt book;

As the landlord failed to provide a completed Direct Request Worksheet, I cannot determine whether the amount sought for a monetary order is proper, or whether the tenants are, in fact, in arrears of their rent.

There is no need for me to consider any further evidence provided by the landlord in support of their application.

The landlord failed to meet the higher evidentiary burden placed on it by virtue of this *ex parte* proceeding. Accordingly, I dismiss the landlord's application 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

The landlord's application for an order for possession and a monetary order are dismissed, with leave to reapply.

The landlord's application for the recovery of filing fees paid for this application is dismissed 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 26, 2018

Residential Tenancy Branch