



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 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 November 19, 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 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

The landlord submitted the following evidentiary material:

- A copy of a “replacement” residential tenancy agreement which was signed by the landlord and the tenant on July 31, 2017, indicating a monthly rent of \$805.00, due on the first day of each month for a tenancy commencing on November 1, 2014;
- Sheet of paper purporting to be a Direct Request Worksheet reading, in its entirety:

rent is \$835

tenant paid only \$400 on nov 5th 2018

he own \$435 rent plus \$25 late fee

total \$460

- A letter from the landlord to the arbitrator dated November 19, 2018 advising that:
 - on November 15, 2018, the tenant made an additional payment of \$435.00;
 - the landlord issued a receipt for use and occupancy only; and
 - the landlord desires an order of possession starting December 1, 2018.
- A copy of a receipt, dated November 15, 2018 , which demonstrates that the tenant provided a partial payment of rent in the amount of \$435.00 , which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 2, 2018 , which the landlord states was served to the tenant on November 2, 2018 , for \$835.00 in unpaid rent due on November 1, 2018 and \$25.00 late fee , with a stated effective vacancy date of November 12, 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 November 2, 2018 . The Proof of Service form states that the service of the Notice was witnessed, however the witness failed to write their full name on the form (one name only, unsure if first or last name) and the witness’ signature does not appear to contain that portion of the name written.

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. Upon review, I find that the proof of service of the Notice form is deficient, as I cannot ascertain the identity of the individual who purported to witness the service of the Notice. I cannot therefore determine if the tenant was properly served with the Notice.

The landlord has failed to meet the higher evidentiary burden it bears in an *ex parte* hearing.

Accordingly, I dismiss the landlord's application, with leave to reapply.

Additionally, I note that, while making no findings, the document the landlord submitted that purported to be a direct request worksheet may not contain the all information that a future adjudicator may deem necessary in order to grant the relief sought by the landlord. In any future application, the landlord may want to consider using the direct request worksheet form available on the Residential Tenancy Branch website.

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 a monetary order and order of possession with leave to reapply.

I dismiss the landlord's application for filing fees 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