



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 21, 2018, the landlord sent the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on November 26, 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 residential tenancy agreement which was signed by the landlord on July 24, 2018, and the tenants on July 28, 2018, indicating a monthly rent of

\$2,750.00, due on the first day of each month for a tenancy commencing on July 28, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 09, 2018, for \$2,750.00 in unpaid rent due on November 01, 2018. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 17, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice posted on the tenants' door on November 09, 2018; and
- A Direct Request Worksheet and tenant ledger showing the rent owing and paid during the relevant portion of this tenancy.

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.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*.

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE - 10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy. A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;
in person, with a witness verifying it was served; or
by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:
registered mail receipt and printed tracking report;

a receipt signed by the tenant, stating they took hand delivery of the document(s); or
a witness statement that they saw the landlord deliver the document(s).

The landlord did submit a proof of service form indicating that the 10 Day Notice to End Tenancy was posted on tenants' door on November 8, 2018. However, the landlord did not submit the required witness statement to confirm service of the 10 Day Notice to End Tenancy being posted to the door of the rental unit. The proof of service form does include the name of a witness, however, there is no accompanying signature for the purported witness to demonstrate that the service of the 10 Day Notice was witnessed, as is required within the Direct Request process, as outlined in Residential Tenancy Policy Guideline #39.

As I am not able to confirm service of the 10 Day Notice to End Tenancy to the tenants, which is a requirement of the Direct Request proceeding, I find that the landlord's application for an Order of Possession and a Monetary Order should be dismissed 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

I order that landlord's application for an Order of Possession and a Monetary Order are dismissed with leave to reapply.

I further order that landlord's request to recover the \$100.00 filing fee paid for this application is denied 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 27, 2018

Residential Tenancy Branch