Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDING CORP and
[tenant name suppressed to protect privacy]

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 Proof of Service Notice to End Tenancy form which declares that on January 2, 2019, the landlord posted a 10 Day Notice to the door of the rental unit. The landlord has not submitted a copy of the Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding documents to the tenant.

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*?

Analysis

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 that such material does not lend itself to ambiguity or give rise to issues that may need 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act.*

I find that the landlord has not provided a copy of a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding documents to the tenant. In its place, I find that the landlord submitted a second copy of the Proof of Service Notice to End Tenancy form discussing service of the 10 Day Notice to the tenant.

I find that I am not able to confirm service of the Notice of Direct Request Proceeding to the tenant, which is a requirement of the Direct Request process, and for this reason the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is 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 dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application 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: February 04, 2019

Residential Tenancy Branch