



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 a two copies of a signed Proof of Service of the Notice of Direct Request Proceeding form which declare that on March 8, 2019, the landlord served tenant GB with the Notice of Direct Request Proceeding via posting on the unit. The Proof of Service form also states that the service was witnessed by “CT” and a signature for “CT” is included on the form.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for Tenant BB and has not established that Tenant BB has been served the Notice of Direct Request Proceeding.

Therefore, I will only hear the landlord’s application against Tenant GB. I dismiss the landlord’s application against tenant BB with leave to reapply.

Section 89(2) of the Act permits applications for orders of possession to be served by posting on the unit. It permits direct requests for neither monetary orders nor filing fees to be served by this method. Such requests must be served in accordance with the methods set out in section 89(1), which include service by registered mail or personal service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the Act, I find that:

- 1) tenant GB has been deemed served with the Direct Request Proceeding documents which pertain to the order for possession on March 11, 2019, the third day after its posting; and
- 2) tenant GB has not been properly served with the Direct Request Proceeding documents which pertain to the landlord’s application for a monetary order.

Accordingly, I dismiss the landlord’s claim against tenant GB for a monetary order, with leave to reapply.

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 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 evidentiary material including:

- A copy of a residential tenancy agreement between the parties which was signed on January 25, 2018 by tenant GB and an agent of the landlord (agent KT) who neither appears to be the applicant nor the applicant's representative (representative LT) on January 25, 2018, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on February 1, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out his claim for unpaid rent owed by March 1, 2019 in the amount of \$7,500.00, comprised of the balance of unpaid rent owed for the months encompassing the period of January 2019 to March 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") dated February 11, 2019 for \$5,000.00 in unpaid rent due on February 1, 2019, with a stated effective vacancy date of February 22, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on February 12, 2019. The Proof of Service form states 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 tenants have 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. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

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.

Paragraph 13(2)(b) of the Act establishes that a tenancy agreement is required to identify “the correct legal names of the landlord and tenant.”

I have reviewed all documentary evidence and I find that the landlord’s name on the tenancy agreement does not match the landlord’s name on the Application for Dispute Resolution. There is also no evidence or documentation showing that the applicant is the owner of the rental unit or is otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord’s name raises a question that cannot be addressed in a Direct Request Proceeding.

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, with leave to reapply, the landlord’s application against tenant BB.

I dismiss, with leave to reapply, the landlord’s application against tenant GB.

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: March 14, 2019

Residential Tenancy Branch