



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 18, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing in fact took place on March 14, 2019. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 19, 2019, 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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on April 6, 2017;
- A copy of a One Month Notice to End Tenancy for Cause (the One Month Notice) dated January 24, 2019 indicating that the tenant is repeatedly late paying rent ;

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the One Month Notice was sent to the tenant by registered mail on January 30, 2019; and
- A ledger showing the rent owing and paid during the relevant portion of this tenancy.

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 evidentiary material 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.

Policy Guideline #39 provides the following information regarding the Direct Request Proceeding:

The Legislation limits the Direct Request Process to applications for orders of possession and monetary orders for unpaid rent and recovery of the filing fee associated with applying for a direct request.

I find that the landlord has not submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The landlord has indicated in their application that rather than issue a 10 Day Notice, the landlord has issued a One Month Notice.

I find that the Direct Request Process is only available for obtaining an Order of Possession for non-payment of rent after the landlord has issued a 10 Day Notice and is not available for seeking an Order of Possession based on a One Month Notice.

For this reason, the landlord's application for an Order of Possession for unpaid rent on the basis of the One Month Notice dated January 24, 2019, is dismissed without leave to reapply.

The landlord has leave to submit an Application for Dispute Resolution through a participatory hearing requesting an Order of Possession for cause on the basis of the One Month Notice.

Conclusion

I dismiss the landlord's application for an Order of Possession for unpaid rent on the basis of the One Month Notice dated January 24, 2019, 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: March 21, 2019

Residential Tenancy Branch