



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 which declares that on April 7, 2019, the landlord served Tenant S.G. the Notice of Direct Request Proceeding by placing the documents in the mailbox of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

The landlord has not provided a Proof of Service of the Notice of Direct Request Proceeding to establish service of the Notice of Direct Request Proceeding documents to the second respondent.

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 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.

In this type of matter, the landlord must prove they served the tenant the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service by either leaving a copy with the person, sending a copy by registered mail to the address at which the person resides, leaving a copy with an adult who apparently resides with the tenant; or attaching a copy to the door or other conspicuous place at the address at which the tenant resides.

I find that the landlord has served the Notice of Direct Request Proceeding by leaving it in the mailbox of the rental unit, which is not a method of service that is in accordance with section 89 of the *Act*.

Since I find that the landlord has not served the tenants with notice of this application in accordance with section 89 of the *Act*, 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: April 10, 2019

Residential Tenancy Branch