



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD
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 signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 15, 2019, the landlord’s agent served the tenant “RH” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant RH acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant RH has been duly served with the Direct Request Proceeding documents on May 15, 2019.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 15, 2019, the landlord’s agent served the tenant “MH” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant MH’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents for the tenant “MH” were served at the rental unit, by way of hand-delivery, to her co-tenant “RH”. The service was confirmed as the co-tenant “RH” acknowledged receipt of the Notice of Direct Request Proceeding documents by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “MH” has been duly served with the Direct Request Proceeding documents on May 15, 2019.

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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,250.00, due on the first day of each month for a tenancy commencing on February 15, 2011;
- A Direct Request Worksheet;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2019, which the landlord states was served to the tenants on May 02, 2019, for \$2,733.50 in unpaid rent due on May 01, 2019, with a stated effective vacancy date of May 12, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of posting it to the door of the rental unit on May 02, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

On the Application for Dispute Resolution by Direct Request, the landlord indicates that a monetary Order is sought for unpaid rent, in the amount of \$2,733.50. However, the Direct Request Worksheet does not provide a sufficient calculation of the unpaid rent owed, as the amount on the Direct Request Worksheet does not match the amount indicated on the Application for Dispute Resolution by Direct Request. The amount on the Direct Request Worksheet reflects a much lower amount of rent owed by April 29, 2019 than is depicted on the Application for Dispute Resolution by Direct Request or on the Notice served to the tenants.

Furthermore, the landlord provided a copy of a receipt dated May 13, 2019, which demonstrates that the tenants provided a partial payment of rent in the amount of \$400.00. If the payment of \$400.00 is taken into account, it yields yet another different amount of unpaid rent purportedly owed by the tenants, and additionally, the partial payment of \$400.00 is not included in the calculation indicated on the Direct Request Worksheet.

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 for 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 they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

Section 59(2)(b) of the *Act* provides that an application for dispute resolution must provide the full particulars of the dispute that is to be the subject of the dispute resolution proceeding. I find that, with respect to the portion of the application that references a request for a monetary order, the landlord has not provided sufficient and clear particulars, such as the details of the calculation of the amount being sought for unpaid rent. Therefore, I find that portion of the landlord's application does not comply with section 59(2)(b) of the *Act*.

On the Application for Dispute Resolution by Direct Request, the landlord states that a monetary Order in the amount of \$2,733.50 is sought for unpaid rent purportedly owed by the tenants. On the Direct Request Worksheet, the landlord has provided different accounting of the unpaid rent owed, which yields a different sum than reflected on the Application for Dispute Resolution by Direct Request.

The Direct Request Worksheet does not provide a sufficient calculation of the unpaid rent owed, as the amount on the Direct Request Worksheet does not match the amount indicated on the Application for Dispute Resolution by Direct Request. The amount on the Direct Request Worksheet reflects a much lower amount of rent owed by April 29,

2019 than is depicted on the Application for Dispute Resolution by Direct Request or on the Notice served to the tenants.

Furthermore, the landlord provided a copy of a receipt dated May 13, 2019, which demonstrates that the tenants provided a partial payment of rent in the amount of \$400.00. If the payment of \$400.00 is taken into account, it yields yet another different amount of unpaid rent purportedly owed by the tenants, and additionally, the partial payment of \$400.00 is not included in the calculation indicated on the Direct Request Worksheet.

The information provided on the Direct Request Worksheet conflicts with the information provided on the Notice issued to the tenants, which provides that the balance of unpaid rent, in the amount of \$2,733.50, was due on May 01, 2019. I therefore find that the landlord has submitted inconclusive evidence that the amount listed on the Notice was the actual rent owed as the landlord did not submit particulars on the Direct Request Worksheet of the breakdown of their monetary claim in the amount of \$2,733.50.

I find that the landlord has submitted an Application for Dispute Resolution by Direct Request which does not provide the full particulars with respect to the calculation of rent purportedly owed. I find that the evidentiary material presented by the landlord brings into question the correct amount of rental arrears owed by the tenants.

I further find that as a result of the discrepancy found on the landlord's Direct Request Worksheet, it brings into question whether the Notice provided to the tenants alerted the tenants to an incorrect amount of rent owing. The landlord has also not provided any evidentiary information to clarify the discrepancy with respect to the actual unpaid rent owed under this tenancy, as the amount requested has not been substantiated by way of evidentiary material that clearly provides an accounting of the unpaid rent owed.

As previously indicated, 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 does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the narrow scope of a Direct Request Proceeding.

I find that there are deficiencies with this application, as outlined above, which cannot be clarified within the narrow scope of the Direct Request process. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies. Therefore, I dismiss the landlord's application for an Order of Possession based on unpaid rent and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 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: May 28, 2019

Residential Tenancy Branch