



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 14, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding documents by leaving the documents with an individual other than the tenant. There was no information provided about the individual to whom the documents were served by hand, as the landlord did not provide details, such as the name or age of the individual with whom the documents were left.

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*?

Analysis

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.

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.

I have reviewed all relevant documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which documents comprising an application for dispute resolution can be served. Section 89 reads, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In the Direct Request process, 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 of Direct Request Proceeding form (form RTB-44) as per subsections 89(1) and (2) of the *Act*.

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Policy Guideline #39 states that the landlord must complete and submit the Proof of Service Notice of Direct Request Proceeding form (form RTB-44) that was included as part of the landlord's Direct Request package.

Policy Guideline #39 provides, in part, the following:

After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the Direct Request Proceeding documents were served by hand by leaving the documents with an individual other than the tenant. There was no information provided about the individual to whom the documents were served by hand, as the landlord did not provide details, such as the name or age of the individual with whom the documents were left, or whether the individual is an adult who apparently resides with the tenant. The tenancy agreement included with this application does not indicate whether any other adult tenants or occupants reside with the tenant listed on the application for dispute resolution and tenancy agreement.

If the Notice of Direct Request Proceeding documents are served by hand-delivering a copy to the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant, the landlord must provide the name of the individual to whom the documents were served by hand. On the Proof of Service of the Notice of Direct Request Proceeding form provided by the landlord, the landlord has not provided the name of the individual to whom the documents were purportedly served by hand. Therefore, I find that the landlord has not adhered to the instructions indicated on the Proof of Service Notice of Direct Request Proceeding form (form RTB-44).

The Proof of Service of the Notice of Direct Request Proceeding form provided by the landlord does not include any additional information to establish that the person with whom the Direct Request Proceeding documents were left is in fact an adult who apparently resides with the tenant, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether the individual to whom the documents were served is an adult who apparently resides with the tenant.

As the landlord has not served the tenant with a copy of the Notice of Direct Request Proceeding containing a copy of the application for dispute resolution in accordance with section 89(1) of the *Act*, I dismiss the landlord's application for a monetary award to recover the filing fee without leave to reapply.

If the landlord had demonstrated that the person with whom the Direct Request Proceeding documents were left was in fact an adult who apparently resides with the tenant, then the service requirement of the documents would have been fulfilled in accordance with section 89(2)(c) of the *Act*, and therefore, would have permitted me to consider this application only for the portion that relates to the landlord's application for an Order of Possession. However, by failing to demonstrate that the person with whom the documents were left is an adult who

apparently resides with the tenant, I find that the landlord has not served the documents in a manner approved under section 89(2) of the *Act*.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that the landlord has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, I dismiss the landlord's application for an Order of Possession based on unpaid rent 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, and the requirements for service of documents, as prescribed in Section 89 of the *Act*, 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 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 17, 2019

Residential Tenancy Branch