



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 applicants (the “applicant”) for an Order of Possession based on unpaid rent and a Monetary Order.

The applicant submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 15, 2019, the agent “DD” served the tenant with the Notice of Direct Request Proceeding via registered mail. The applicant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the respondent has been deemed served with the Direct Request Proceeding documents on May 20, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the applicant entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the applicant 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 applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which listed the landlords as being an entity bearing the initials “GTRI” and an individual bearing the initials “HD”.

The Application for Dispute Resolution by Direct Request lists the landlords as being individuals bearing the initials “ML” and “XZ”.

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 landlords 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 find that the evidentiary material provided by the applicant brings into question whether the correct landlords are identified on the Application for Dispute Resolution by Direct Request. The landlords listed on the Application for Dispute Resolution are individuals, who will be identified as bearing the initials “ML” and “XZ”. However, the information provided on the tenancy agreement does not support the assertion that “ML” and “XZ” are the correct landlords, as “ML” and “XZ” are not identified as the landlords on the tenancy agreement. The landlords listed on the tenancy agreement are an entity, which, for the purpose of this decision, will be identified as bearing the initials “GTRI” and an individual bearing the initials “HD”.

The tenancy agreement demonstrates that “GTRI” and “HD” were listed on the tenancy agreement as the landlords, and that they endorsed the terms of the tenancy agreement to enter into a tenancy agreement with the tenant identified on the tenancy agreement and on the application for dispute resolution.

I find that the applicants have not demonstrated whether the landlords listed on the application form, “ML” and “XZ”, inherited the tenancy agreement from the landlords listed on the tenancy agreement, or whether the applicants “ML” and “XZ” have authorization to act as agents for the landlords listed on the tenancy agreement. I further find that the applicants “ML” and “XZ” have not demonstrated that they entered into a tenancy agreement with the individual identified as the respondent tenant on the application for dispute resolution.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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. I find that there are deficiencies with this application that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlords are correctly identified on both the application for dispute resolution and on the tenancy agreement. 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.

Based on the foregoing, I dismiss the applicants’ application for an Order of Possession and a Monetary order with leave to reapply.

It remains open to the applicant 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 applicant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the applicants were not successful in this application, I find that the applicants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicants’ application for an Order of Possession with leave to reapply.

I dismiss the applicants’ application for a monetary Order with leave to reapply.

I dismiss the applicants’ 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 21, 2019

Residential Tenancy Branch