



Dispute Resolution Services

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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 form which declares that on May 03, 2019, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord 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 landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on May 08, 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*?

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 tenant, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on April 01, 2017;
- A Direct Request Worksheet;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 16, 2019, which the landlord states was served to the tenant on April 16, 2019, for \$10,000.00 in unpaid rent due on November 01, 2018, with a stated effective vacancy date of April 26, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit on April 16, 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.

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 any 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 \$10,000 is sought for unpaid rent owed for a period of five months. On the Direct Request Worksheet, the landlord has not provided any details to depict the accounting of the five months for which rental arrears of \$10,000.00 are purportedly owed. On the Direct Request Worksheet, the landlord states that unpaid rent in the amount of \$10,000.00 was owed as of April 01, 2019. However, the information provided on the Direct Request Worksheet conflicts with the information provided on the Notice, which provides that the balance of unpaid rent, in the amount of \$10,000.00, was due on November 01, 2018.

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 tenant. The landlord indicates that \$10,000.00 was owed by November 01, 2018, followed by a gap for the period of November 01, 2018 to March 01, 2019, since the Direct Request Worksheet depicts only the unpaid rent owed for March 2019 and April 2019.

The gap in the ledger results in missing information which, in turn, does not allow for the accounting of any potential payments made by the tenant during that time. 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 tenant alerted the tenant 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 06, 2019

Residential Tenancy Branch