



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 landlords (the “landlord”) for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on June 13, 2019, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of a 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 tenants have been deemed served with the Direct Request Proceeding documents on June 18, 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, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant “AG”, indicating a monthly rent of \$2,900.00, due on the 20th day of each month for a tenancy commencing on November 20, 2018;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$3,950.00 for outstanding rent, comprised of the balance of unpaid rent due by May 30, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 30, 2019, which the landlord states was served to the tenant on May 30, 2019, for \$3,950.00 in unpaid rent due on May 30, 2019, with a stated effective vacancy date of June 10, 2019;

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

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.

The Direct Request process is a mechanism that allows a landlord to apply for an expedited decision, and as such, the landlord must follow and submit documentation exactly as prescribed by the *Act* and Policy Guideline #39 – Direct Requests. There can be no omissions or deficiencies with items being left open to interpretation or inference.

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 complete 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 \$3,950.00 is sought for unpaid rent. On the Direct Request Worksheet, the landlord has not provided complete details to depict the accounting of the rental arrears in amount of \$3,950.00 claimed as being owed by the tenant.

The monetary amount of \$3,950.00 claimed as being the unpaid rent owed by the tenant differs from the amount of monthly rent, in the amount of \$2,900.00, established as being owed in the tenancy agreement. The landlord has not provided any details to clarify the difference in the amount of rent owed under the tenancy agreement and the greater amount claimed on the Application for Dispute Resolution by Direct Request and the Direct Request Worksheet. I find that the landlord has not adhered to section 59(2)(b) of the *Act*, as the landlord has not provided any particulars with respect to this discrepancy in the different amounts provided for the monthly rent owed.

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.

I further find that as a result of the incomplete calculation found on the landlord's Direct Request Worksheet, as described above, it brings into question whether the Notice provided to the tenant alerted the tenant to an incorrect amount of rent owing, as the amount indicated on the Notice has not been substantiated by way of evidentiary material that clearly provides an accounting of the unpaid rent owed purportedly owed by the tenant. Therefore, it leaves open the possibility that the landlord's request for an Order of Possession based on unpaid rent may be based on an unsubstantiated and unproven amount of rent purportedly 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: June 17, 2019

Residential Tenancy Branch