



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 which declares that on July 19, 2019, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on July 19, 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 relevant evidentiary material:

- A copy of a residential tenancy agreement which lists a landlord who is not the applicant and was signed by the tenant on August 9, 2017, indicating a monthly

rent of \$1,685.00, due on the first day of each month for a tenancy commencing on August 18, 2017;

- A copy of a metered utility statement for the landlord's address for service indicated on the tenancy agreement;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,685.00 to the current monthly rent amount of \$1,752.40;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 3, 2019, for \$937.80 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of Jul 16, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 4:00 pm on July 3, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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 that such evidentiary material 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 documentary evidence and I find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution.

The landlord submitted a copy of a utility bill for the landlord's address for service listed on the tenancy agreement, showing that the sewer and water utilities are in the applicant's name. However, I find that these utilities can be under any person's name and are not restricted to the owner of the property receiving the services.

I find this is not sufficient evidence, in a Direct Request Proceeding, to establish that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

As this is an ex parte proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the 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: July 19, 2019

Residential Tenancy Branch