



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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 December 04, 2019, the landlord served the tenant “RM” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “BB” and a signature for “BB” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “RM” has been duly served with the Direct Request Proceeding documents on December 04, 2019.

The landlord has not provided a signed, completed Proof of Service of the Notice of Direct Request Proceeding form for the respondent “MF” and has not established that the respondent “MF” has been served the Notice of Direct Request Proceeding documents. Therefore, I dismiss the landlord’s application against the respondent “MF” with leave to reapply. I will hear the landlord’s application against the tenant “RM” only.

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*?

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 tenants, indicating a monthly rent of \$1,000.00 due on the first day of each month for a tenancy commencing on April 01, 2019;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$352.00, comprised of the balance of unpaid rent due by November 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 10, 2019, which the landlord states was served to the tenants on November 02, 2019, for \$352.00 in unpaid rent due on November 01, 2019, with a stated effective vacancy date of November 20, 2019; and
- A copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery to the tenant "RM" on November 02, 2019. The personal service was confirmed as the tenant RM acknowledged receipt of the Notice by signing the Proof of Service form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

The landlord also provided a copy of a "Mutual Agreement to End a Tenancy" form (the "mutual agreement"), dated November 10, 2019, which was signed by the landlord and both tenants. The mutual agreement establishes that the parties agreed that the tenancy would end pursuant to the mutual agreement and that the tenants would vacate the rental unit at 1:37 PM on November 30, 2019.

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.

I find that there is a discrepancy with respect to the date of the 10 Day Notice to End Tenancy and the Proof of Service of the Notice form. The Notice is dated November 10, 2019; however, the Proof of Service of the Notice form provides that the Notice was served on November 02, 2019. The Proof of Service of the Notice form is endorsed with the landlord's signature attesting that the Notice was served on November 02, 2019 and includes a signature from the tenant RM confirming that she was served with the Notice on November 02, 2019.

The landlord has not provided any explanation as to how a Notice dated November 10, 2019 could have been served much earlier on November 02, 2019.

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 purview 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.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession, based on the November 10, 2019 Notice, with leave to reapply.

I turn now to the copy of a “Mutual Agreement to End a Tenancy” form signed by both the landlord and the tenants. Section 44 of the *Act* provides, in part, the following with respect to how a tenancy ends:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(c) the landlord and tenant agree in writing to end the tenancy;

Section 55 of the *Act* provides, in part, the following with respect to an Order of Possession for the landlord:

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I find that the “Mutual Agreement to End a Tenancy” form signed by the parties had the effect of ending the tenancy on November 30, 2019. By virtue of its form and contents, and in accordance with the provisions of section 44(1)(c) of the *Act*, I find that the mutual agreement entered into by the parties effectively ended the tenancy on November 30, 2019, as agreed by the parties.

Therefore, I find that it is open to the landlord to seek an Order of Possession pursuant to section 55(2) of the *Act*. Based on the foregoing, pursuant to sections 44 and 55(2) of the *Act*, the landlord is entitled to an Order of Possession of the rental unit on the basis that the parties to the tenancy signed a “Mutual Agreement to End a Tenancy” form, dated November 10, 2019.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 12, 2019

Residential Tenancy Branch