



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 December 18, 2019, the landlord’s agent served the tenant “GS” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant GS 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 “DM” and a signature for “DM” 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 GS has been duly served with the Direct Request Proceeding documents on December 18, 2019.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on December 18, 2019, the landlord served the tenant “Se.S” with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord states that the Notice of Direct Request Proceeding documents were served at the rental unit, by way of hand-delivery, to an adult individual bearing the initials “GS”. The service was confirmed as the co-tenant “GS” acknowledged receipt of the Notice of Direct Request Proceeding documents by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “DM” and a signature for “DM” 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 “Se.S” has been duly served with the Direct Request Proceeding documents on December 18, 2019.

Although a third individual, identified as “Su.S”, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a third tenant on the first page of the tenancy agreement, a signature for “Su.S” does not appear on the tenancy agreement to demonstrate that “Su.S” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenants “GS” and “Se.S” only and amend the application, in accordance with section 64(3)(c), to exclude “Su.S” as a party to this dispute.

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 landlord’s agent and the tenants, indicating a monthly rent of \$1,600.00 due on the first day of each month for a tenancy commencing on September 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 \$600.00, comprised of the balance of unpaid rent due by December 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 04, 2019, which the landlord states was served to the tenants on

December 04, 2019, for \$1,650.00 in unpaid rent due on December 01, 2019, with a stated effective vacancy date of December 14, 2019; and

- A copy of the Proof of Service of the Notice form asserting that the landlord's agent "TM" served the Notice to the tenants on December 04, 2019 by way of leaving the Notice with an adult who apparently lives with the tenant. There was not any information provided about the individual to whom the Notice was served by hand, as the landlord did not provide details, such as the name or age of the individual with whom the Notice was left.

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 have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be

given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the first page of the Proof of Service of the Notice form, the landlord has checked a box indicating that the Notice was served by way of leaving the Notice with an adult who apparently lives with the tenant.

Section 88(e) of the *Act* which permits for the Notice to be left at the tenant's residence with an adult who apparently resides with the tenants. If service of the Notice is carried out in this manner, the landlord is required to provide details that support the landlord's claim that the individual to whom the Notice was given is an adult who *resides* with the tenant. On the Proof of Service of the Notice form, the landlord is instructed to provide information in the box titled "special details" to demonstrate that the person with whom the Notice was left is an adult who resides with the tenants.

I find that the landlord has not provided sufficient information to adequately demonstrate that this requirement has been fulfilled and does not provide sufficient details to clearly establish that service of the Notice was carried out in a manner consistent with section 88 of the *Act*.

There was not sufficient information provided about the individual to whom the Notice was served by hand, as the landlord did not provide details, such as the name or age of the individual with whom the Notice was left. The landlord provides only that the individual is the sister of the tenant GS, and that the individual moved-in to the unit temporarily. However, the landlord has not provided any evidence or information to

establish that the individual is an adult. The tenancy agreement included with this application does not indicate whether any other adult tenants or occupants reside with the three respondents listed on the application for dispute resolution and tenancy agreement.

If the Notice is served by hand delivering a copy to the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant, the landlord must provide the name of the individual to whom the documents were served by hand. On the Proof of Service of the Notice form provided by the landlord, the landlord has not provided the name or age of the individual to whom the Notice was purportedly served by hand.

The Proof of Service form provided by the landlord does not include any additional information to establish that the individual with whom the Notice was left is in fact an adult who apparently resides with the tenants, and furthermore, there is no information provided in any of the evidentiary material submitted by the landlord that speaks to the issue of whether the individual, describes as being the sister of tenant GS, is an adult who apparently resides with the tenants.

I find that, by serving the Notice to an individual that has not been clearly proven to be an adult who apparently resides with the tenants, the landlord has not served the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*. Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and therefore, I am not able to confirm service of the Notice to End Tenancy to the tenants, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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 by way of the Direct Request Proceeding. 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 landlords' application for an Order of Possession 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: December 18, 2019

Residential Tenancy Branch