



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 21, 2019, the landlord served the tenant “SB” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “KP” and a signature for “KP” 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 SB has been duly served with the Direct Request Proceeding documents on December 21, 2019.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on which the landlord asserts that on December 21, 2019, the landlord served the tenant “TB” with the Notice of Direct Request Proceeding documents via registered mail to an address which is different than the address of the rental unit. The landlord provided a copy of the Canada Post transaction receipt containing the Tracking Number to confirm this 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 landlord and the tenants; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 02, 2019, which does not include an effective date.

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.

I have reviewed all relevant documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Section 89 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the Direct Request Proceeding documents were served to the tenant TB by way of registered mail to an address that is not the same as the address of the rental unit. If the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the tenant TB, within the narrow scope of the Direct Request process, the landlord bears

the burden to provide proof to support any such agreement. I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided by the landlord as an approved alternate service address for the tenant TB, and there is no evidence before me to demonstrate that the parties agreed that the landlord may serve the documents to the tenant via an alternate address that differs from the address of the rental unit.

I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the Direct Request Proceeding documents via registered mail to an address that differs from the address of the rental unit and one that is not established as an alternate service address for the tenant TB, the landlord has not served the Notice of Direct Request Proceeding to the tenant TB in accordance with the *Act*. I find that the landlord has not sufficiently established that the Direct Request Proceeding documents have been served in accordance with Policy Guideline #39, and further find that I am not able to confirm service of the Notice of Direct Request to the tenant TB, which is a requirement of the Direct Request process.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order against the tenant TB with leave to reapply.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...and
- (e) when given by a landlord, be in the approved form...

I have reviewed all documentary evidence and find that the Notice, dated December 02, 2019, which was served to the tenants does not adhere to the provisions of section 52 of the *Act*. The Notice does not include the effective date (the day when the tenants must move out of or vacate the site) of the Notice, therefore making the Notice incomplete. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is provided on the Notice.

In a participatory hearing it may be possible to amend certain deficiencies with respect to the Notice or to seek clarification from the parties, however, in the limited scope of the Direct Request process, the *Act* does not allow an adjudicator to input an effective date of the Notice where none is provided on the Notice. Therefore, I find that the December 02, 2019 Notice is not in compliance with the provisions of section 52 of the *Act* and is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlord's application for an Order of Possession, based on the December 02, 2019 Notice, without leave to reapply.

Based on the foregoing, I dismiss the landlord's application for a monetary Order 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, based on the December 02, 2019 Notice, without leave to reapply.

The 10 Day Notice dated December 02, 2019, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a monetary Order 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: December 30, 2019

Residential Tenancy Branch