



Dispute Resolution Services

Page: 1

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

The applicant submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 09, 2020 the applicant served each of the above-named respondents with the Notice of Direct Request Proceeding via registered mail. The applicant provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the respondents have been deemed served with the Direct Request Proceeding documents on March 14, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the applicant entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the applicant 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 applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which does not provide any information to identify the landlord(s);

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.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due.

“Policy Guideline #39. Direct Requests” provides the guidelines with respect to the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution, a copy of

the tenancy agreement. Section 13 of the *Act* provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(b) the correct legal names of the landlord and tenant;

I find that the copy of the tenancy agreement provided by the applicant does not include the full, correct legal name of the landlord, as the tenancy agreement does not provide any information to identify the landlord.

The tenancy agreement does not provide any information to identify the landlord, as it includes only the names of the tenants and a signature of an unnamed individual who is identified as being a manager. However, the tenancy agreement does not provide any information to identify the name of the landlord.

I find that the evidentiary material provided by the applicants brings into question whether the correct landlords are identified on the application for dispute resolution. The landlords listed on the application are individuals, who will be identified as bearing the initials "PK" and "GK" respectively. However, "PK" and "GK" are not identified as being the landlords on the tenancy agreement; rather, I find that the tenancy agreement does not establish the name or identity of the landlord.

I find that the applicants have not demonstrated whether the individuals listed as being the landlords on the application form, "PK" and "GK", entered into a tenancy agreement with the individuals identified as the respondent tenants on the application form and in the tenancy agreement.

As previously indicated, in an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 identified above, that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly identified on both the application form and on the tenancy agreement. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material or testimony which may clarify the questions raised by these inconsistencies.

Therefore, I dismiss the applicants' application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the applicant 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 applicant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicant's application for an Order of Possession with leave to reapply.

I dismiss the applicant's application for a monetary Order with leave to reapply.

I dismiss the applicant'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: March 18, 2020

Residential Tenancy Branch