



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which asserts that on March 25, 2020, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit.

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 recover the filing fee for this application pursuant to section 72 of the *Act*?

Analysis

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.

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 landlords 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 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;
- (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;
- (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*].

In the Direct Request process, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89(1) and (2) of the *Act*,

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding documents to be attached to the door of the rental unit only when considering the issuance of an Order of Possession for the landlord.

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*. Policy Guideline #39 states that the landlord must complete and submit the Proof of Service Notice of Direct Request Proceeding form (form RTB-44) that was included as part of the landlord's Direct Request package.

Policy Guideline #39 provides, in part, the following:

After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the tenant was served with the Direct Request Proceeding documents by way of posting the documents to the door of the rental unit.

If service of the Direct Request Proceeding documents was completed in this manner, the landlord must provide proof, such as a witness statement, including the name and signature of a witness, to confirm service of the Direct Request Proceeding documents.

On the Proof of Service Notice of Direct Request Proceeding form (form RTB-44), there is a field provided in which a witness can provide his/her name and signature to attest to having witnessed service of the Direct Request Proceeding documents in a manner declared by the individual serving the documents.

However, the Proof of Service Notice of Direct Request Proceeding form submitted by the landlord does not include the name and signature of a witness to confirm that the

service was carried out as attested by the landlord, in the presence of a witness, as that field of the form was left blank.

If the Direct Request Proceeding documents are served by posting the documents to the door of the rental unit, I find that the landlord is required to provide a completed Proof of Service Notice of Direct Request Proceeding form (form RTB-44), which includes the name and signature of a witness to confirm that the documents were served in accordance with the Act.

I find that the landlord has not demonstrated that service of the Direct Request Proceeding documents were witnessed and completed in accordance with the Act, nor has the landlord provided the name and signature of a witness on the Proof of Service Notice of Direct Request Proceeding form, as is required within the Direct Request process.

The Proof of Service Notice of Direct Request Proceeding form provided by the landlord does not satisfy the requirements under the Direct Request Process to prove that the tenant was served with the Direct Request Proceeding documents in accordance with the Act, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm that the tenant has been served with the Direct Request Proceeding documents in accordance with the Act, which is a requirement of the Direct Request process.

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 the landlord has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, I dismiss the landlord's application for an Order of Possession based on unpaid rent 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, and the requirements for service of documents, as prescribed in Section 89 of the *Act*, 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 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 landlord's application for an Order of Possession 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 30, 2020

Residential Tenancy Branch