Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 March 26, 2020, the landlord served the tenant 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 "MS" and a signature for "MS" 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 has been duly served with the Direct Request Proceeding documents on March 26, 2020.
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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 a copy of a residential tenancy agreement. The tenancy agreement does not state the amount of rent payable under the tenancy, or the day in the month, or in the other period on which the tenancy is based, on which the rent is due.

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.

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, and the agreed upon amount with respect to the rent payable for a specified period.

"Policy Guideline #39. Direct Requests" provides the guidelines which govern 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:
>> (f) the agreed terms in respect of the following:
>>> (iv) the amount of rent payable for a specified period…;
>>> (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the amount of rent owed with respect to the tenancy. Rather, on the tenancy agreement, in the field where the parties are to enter the agreed upon amount of rent payable, there is not an amount listed in the box in which a monetary amount is to be indicated as the specified amount of rent owing with respect to the tenancy, as that field appears to have been rendered blank by being covered with a "white-out" liquid.

The tenancy agreement contains an additional deficiency, as it does not specify the day in the month, or in the other period on which the tenancy is based, on which the rent is due.

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 the tenancy agreement provided by the landlord brings into question the correct amount of rent owed by the tenant and further brings into question the day in the month, or in the other period on which the tenancy is based, on which the rent is due.

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.

I find that a participatory hearing will provide the proper venue to make a determination on these issues and to hear the landlord's request for an Order of Possession and a monetary Order.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an Arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. For more information see our website at: gov.bc.ca/landlordtenant.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

> **Lower Mainland**: 604-660-1020
> **Elsewhere in BC:** 1-800-665-8779

This interim 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: April 01, 2020

Residential Tenancy Branch