



Dispute Resolution Services

Page: 1

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 31, 2020, the landlord served the tenant 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 “PM” and a signature for “PM” 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 31, 2020.

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.

As part of his evidence package, the landlord submitted a copy of a residential tenancy agreement which depicts that the address for the landlord is the same as the rental unit address for the tenant.

On the landlord's Application for Dispute Resolution by Direct Request (the "application"), the landlord provided a written statement as follows:

"The tenant has rented one room from the basement unit of our house. The Kitchen, laundry and bathroom are shared between the residents of the unit. The landlord is using the storage in the unit."

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 find that the evidentiary material provided by the landlord gives rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I note that it appears the tenant is only renting a room within the basement of a house in which the landlord resides. Additionally, the landlord's statement provided on the application states that the landlord is using a storage space in the unit occupied by the tenant.

I find that the preceding information brings into question whether the landlord and the tenant are sharing a kitchen or bathroom area, since the landlord has access and use of the same space as the area defined as the tenant's rental unit, and the landlord's statement suggests that the kitchen and bathroom in the basement are shared facilities.

If the aforementioned is true, in accordance with section 4 (c) of the *Act*, I would not have jurisdiction to make a decision regarding this tenancy. Therefore, based on the evidentiary material provided by the landlord, it brings into question whether the landlord is also the owner of the rental unit in which the tenant occupies a room, and whether the parties share bathroom or kitchen facilities. Section 4 (c) of *Act* provides that the *Act* would not apply in this case if the tenant shares bathroom or kitchen facilities with the owner of the rental unit.

I find that I cannot make a determination on the issues identified above within the narrow scope of the Direct Request process. The questions raised by the issues identified above cannot be remedied by inferences in the absence of more evidentiary material or oral testimony. Therefore, 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 08, 2020

Residential Tenancy Branch