



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park 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 October 23, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 83 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 82 and 83 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on October 28, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 65 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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$310.00.

As part of its evidentiary material package, the landlord provided an incomplete copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), as the landlord provided only the first page of the three-page document. The landlord also provided an incomplete copy of the "Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities" (form RTB-34) the "Proof of Service of the Notice" form.

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.

“Policy Guideline #39. Direct Requests” provides the guidelines with respect to the Direct Request process and contains the details about the key elements that need to be considered when making an application for Direct Request. 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 when making an Application for Dispute Resolution by Direct Request, the landlord must provide a copy of the 10 Day Notice.

The landlord must also prove the tenant was served with the 10 Day Notice and the Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

I find that the landlord’s application does not contain all of the required documents cited above and is therefore incomplete. The landlord has not provided a copy of the complete 10 Day Notice that was purportedly served to the tenant, as the landlord has provided only the first page of the three-page document that comprises the 10 Day Notice. Additionally, the landlord has provided an incomplete copy of the Proof of Service of the Notice form, as the landlord provided only the first page of the form and did not provide a copy of the second page of the form where signatures are to be provided for the person who may have served the 10 Day Notice and signatures of any witnesses attesting to having witnessed service of the 10 Day Notice.

In the absence of a complete 10 Day Notice to review, and in the absence of a complete Proof of Service of the Notice form, I find that the landlord’s application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process, as the application is incomplete.

As noted above, the landlord has submitted an incomplete application which does not include the required documents cited in Policy Guideline # 39. I find that I am not able to consider the landlord’s Application for Dispute Resolution by way of the Direct Request process without the documents cited above, which form a part of a complete Application for Dispute Resolution by Direct Request.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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 there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. 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.

Based on the foregoing, I dismiss the landlords' application for an Order of Possession and 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 with leave to reapply.

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

I dismiss the landlord'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 *Manufactured Home Park Tenancy Act*.

Dated: November 12, 2020

Residential Tenancy Branch