Dispute Resolution Services

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 55(4) of the *Residential Tenancy Act* (the "*Act*") and dealt with an Application for Dispute Resolution filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

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 that such evidentiary material 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 provides direction to landlords making an application for dispute resolution by direct request. It confirms:

> *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. The landlord may prove service of one of these methods of service as described in the table above.*
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> [Reproduced as written.]

The language in Policy Guideline #39 is mandatory.

I note that the Landlord did submit a copy of a Canada Post receipt containing a Tracking Number to confirm a package was sent to the Tenant on January 11, 2021. However, the Landlord did not provide a copy of the Proof of Service of the Notice of Direct Request Proceeding form which would include a statement establishing service of the Notice of Direct Request Proceeding documents to the Tenant. Without this accompanying statement, I find that I am not able to confirm service of the Notice of Direct Request Proceeding and supporting documents to the Tenant, which is a requirement of the Direct Request process. For this reason, I order that the Landlord's application for an order of possession and a monetary order for unpaid rent is dismissed 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. This aspect of the application is dismissed 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: January 28, 2021

Residential Tenancy Branch