



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

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 who make an application for dispute resolution by Direct Request:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- *the written tenancy agreement;*
- *documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;*
- *the Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;*
- *the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (this is often considered proof that the tenant did not pay rent); and,*

- *proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities.*

...

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.

[Reproduced as written.]

The language in Policy Guideline #39 is mandatory.

In this case, I note that the Landlord did not submit a written tenancy agreement with the application. Although this is sufficient to dismiss the Landlord's application, I also note the Landlord did not submit a complete 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and that the Proof of Service - Notice of Direct Request Proceeding submitted does not indicate the Notice of Direct Request Proceeding was served on the Tenant and is not clear with respect to the method of service.

Accordingly, I find that the evidentiary material referred to above does not comply with the requirements of the *Act* and Policy Guideline #39, giving rise to deficiencies and ambiguities that cannot be addressed during a Direct Request Proceeding.

The Landlord's request for an order of possession and a monetary order based on unpaid rent are dismissed with leave to reapply.

As the Landlord has not been successful, the Landlord's request to recover the filing fee paid to make 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: February 26, 2021

Residential Tenancy Branch