



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by leaving a copy with K.B. The Proof of Service - Notice to End Tenancy document submitted by the Landlord confirms K.B. is an adult who appears to reside with the Tenant.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be served on a tenant by leaving a copy with an adult who appears to reside with the tenant when requesting a monetary order.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be served on a tenant by leaving a copy with an adult who appears to reside with the tenant when requesting an order of possession.

I find that the Landlord served the Notice of Direct Request Proceeding on the Tenant by leaving a copy with K.B., an adult who appears to reside with the Tenant. For this reason, the monetary portion of the Landlord’s request for unpaid rent is dismissed with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. 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 an unsigned tenancy agreement which purported to establish a tenancy commencing on January 24, 2020.

Analysis

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.

Paragraph 12(1)(b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the tenancy agreement submitted by the Landlord is not signed by either party, which is a requirement of the Direct Request process. As a result, I find that the Landlord’s request for an order of possession is dismissed with leave to reapply.

As the Landlord has not been successful, I find that the Landlord’s request for recovery of the filing fee is dismissed without leave to reapply.

Conclusion

The Landlord's request for a monetary order based on unpaid rent is dismissed with leave to reapply.

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

The Landlord's request to recover the filing fee 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: March 5, 2021

Residential Tenancy Branch