



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on May 2, 2021, the landlord personally served the Notices of Direct Request Proceeding. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm this service.

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 recover the filing fee for this application pursuant to section 72 of the *Act*?

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.

In this type of matter, the landlord must prove they served the tenants the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service by:

- leaving a copy with the person.
- sending a copy by registered mail.
- leaving a copy with an adult who apparently resides with the tenant.

- attaching a copy to the door.

When submitting the proof of service documents, the landlord has indicated the Notices of Direct Request Proceeding were delivered to the person in the unit. However, on the Proof of Service Notice of Direct Request Proceeding forms the landlord has not provided the name on the person to whom the Notice of Direct Request Proceeding documents were handed.

I find I am not able to confirm whether the Notices of Direct Request Proceeding were handed to one of the tenants, to an adult who resides with the tenants, or to a person who does not reside with the tenants.

I find I am not able to confirm service of the Notice of Direct Request Proceeding to the tenants, which is a requirement of the Direct Request process.

For this reason, the landlord's application for an Order of Possession 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.

Conclusion

I dismiss the landlord's application for an Order of Possession for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the 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 *Residential Tenancy Act*.

Dated: May 17, 2021

Residential Tenancy Branch