



Dispute Resolution Services

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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 for unpaid rent and to recover 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 a Notice of Dispute Resolution Proceeding and supporting documents by email and by attaching a copy to the Tenant’s door on May 23, 2021.

With respect to service of these documents by email, Policy Guideline #12 provides direction to parties. It states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

[Reproduced as written.]

In this case, the Landlord submitted an email from C.T. to the Tenant dated May 23, 2021 in support of service. The Landlord also submitted copies of email correspondence between C.T. and the Tenant concerning the Tenant’s use of a power source in the hallway and payment of rent. However, I find there is insufficient evidence before me to confirm the Tenant was served with these documents by email in accordance with the *Act* and Policy Guideline #12. There is insufficient evidence before

me that the Tenant provided the email address used by the Landlord specifically for the purpose of giving or serving documents.

With respect to service of these documents by attaching a copy to the Tenant's door, section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides when seeking a monetary order for unpaid rent.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides only when considering an order of possession for the landlord.

I find that the landlord served the Notice of Dispute Resolution Proceeding by attaching a copy to the Tenant's door. Therefore, in accordance with section 89 of the *Act*, I order that the monetary portion of the Landlord's application for unpaid rent is dismissed with leave to reapply. This aspect of the Landlord's application has not been considered further.

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 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 the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties, indicating a monthly rent in the amount of \$1,100.00 due on the first day of each month, for a tenancy commencing on January 1, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2021 for \$1,100.00 in unpaid rent due on February 1, 2021. The Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 10, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2021 for \$1,100.00 in unpaid rent due on March 1, 2021. The Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 10, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2021 for \$1,100.00 in unpaid rent due on April 1, 2021. The Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 10, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2021 for \$1,100.00 in unpaid rent due on May 1, 2021. The Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 10, 2021;
- A copy of signed Proof of Service Notice to End Tenancy document which indicates that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the Tenant by attaching a copy to the Tenant's door on May 1, 2021, which service was witnessed by B.T.; and
- A copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

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 case, I find the evidence submitted by the Landlord is ambiguous and gives rise to issues that cannot be addressed in a Direct Request Proceeding.

Specifically, it is not clear which of the four Notices submitted into evidence was served on the Tenant or when. As the Notices are all dated April 30, 2021, it appears *but cannot be established* that the Landlord served all the Notices on the Tenant on May 1, 2021. If so, the creation of multiple Notices was not only unnecessary but also gives rise to uncertainty about the amount of rent due and the effectiveness of the Notices to end the tenancy.

Considering the above, I find that the Landlord's request for an order of possession for unpaid rent is dismissed with leave to reapply.

As the Landlord has not been successful, I find that the Landlord's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

I order that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

I order that the Landlord's request for an order of possession for unpaid rent is dismissed with leave to reapply.

I order that 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: May 31, 2021

Residential Tenancy Branch