



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-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 landlords to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

The landlords submitted one signed Proof of Service Notice of Direct Request Proceeding which declares that on August 1, 2021, the landlords sent the tenants the Notice of Dispute Resolution Proceeding - Direct Request by e-mail and personally served the tenants the Notice of Dispute Resolution Proceeding – Direct Request.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords 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 landlords 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 landlords must prove they served the tenants with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act* and in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #12 on Service Provisions provides the following requirement:

“Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately.

I find that the landlords have included both tenants’ names on one Proof of Service Notice of Direct Request Proceeding form. In an ex parte hearing, I find that I am not able to determine whether the landlords handed one of the tenants one copy of the Direct Request documents, handed one tenant two copies of the Direct Request documents, or handed each tenant their own copy of the Direct Request documents.

I find that I am not able to confirm in-person service of the Notices of Dispute Resolution Proceeding - Direct Request to each of the parties individually as required by sections 71 and 89 of the *Act*.

The landlords have also indicated they sent the Notice of Dispute Resolution Proceeding – Direct Request to the tenants by e-mail.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

The landlords submitted copy of an e-mail from Tenant F.A.I. confirming they received an e-mail from the landlords dated July 28, 2021. However, I find there is no evidence showing that the tenants specifically authorized documents to be served by e-mail.

I find the landlords have not demonstrated that the tenants' e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm e-mail service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenants.

For these reasons, the landlords’ application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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: August 19, 2021

Residential Tenancy Branch