



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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 16, 2021, the landlords personally served Tenant B.S. and Tenant J.S. the Notice of Dispute Resolution Proceeding - Direct Request. The landlord had Tenant B.S. and Tenant J.S. sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service.

Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant B.S. and Tenant J.S. on August 16, 2021.

The landlords also submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on August 16, 2021, the landlords served Tenant A.S. the Notice of Dispute Resolution Proceeding - Direct Request by attaching the documents to the door of the rental unit. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this mailing.

Section 89(2) of the *Act* allows for the Notice of Dispute Resolution Proceeding - Direct Request 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.

In their Application for Dispute Resolution by Direct Request, the landlords have indicated that Tenant A.S. does not live at the rental unit.

As the landlords have attached Tenant A.S.'s documents to a door where Tenant A.S. does not reside, I find that the landlords have not served Tenant A.S. in accordance with the *Act*.

For this reason, I cannot consider the portion of the landlords' application naming Tenant A.S. as a respondent. I will only proceed with the portion of the landlords' application naming Tenant B.S. and Tenant J.S. as respondents.

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

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment.

A previously decided issue is comparable to the criminal law concept of double jeopardy.

I find the landlords were successful in a previous dispute in obtaining an Order of Possession and a Monetary Order based on the 10 Day Notice dated July 9, 2021.

I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

For this reason, the landlords' application for an Order of Possession based on the 10 Day Notice dated July 9, 2021 is dismissed without leave to reapply.

For the same reason listed above, the landlords' application for a Monetary Order for unpaid rent owing from February 2021 to July 2021 is dismissed without 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 based on the 10 Day Notice dated July 9, 2021 without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing from February 2021 to July 2021 without 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: September 03, 2021

Residential Tenancy Branch