



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

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.

In an ex parte Direct Request Proceeding, the onus is on the applicant 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 applicant 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 Tenant with the Notice of Dispute Resolution Proceeding and supporting evidence in accordance with section 89 of the Act.

Policy Guideline #39 provides direction to a landlord making an application for dispute resolution by direct request. It states:

After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.

The language in Policy Guideline #39 is mandatory.

In this case, the Landlord submitted Canada Post registered mail receipts which confirm the date and time of purchase and include the tracking number. However, the Landlord did not submit a Proof of Service Notice of Direct Request Proceeding (form RTB-44) which would include a statement establishing service of the Notice of Dispute Resolution Proceeding and supporting evidence on the Tenant. Without this statement, I find that I am not able to confirm what documents were included in the registered mailing sent on December 23, 2021. as required under Policy Guideline #39.

Considering the above, I order that the Landlord's requests for an order of possession and a monetary order for unpaid rent are dismissed with leave to reapply.

As the Landlord was not successful, 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: January 20, 2022

Residential Tenancy Branch