



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 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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the applicants on January 20, 2022.

The applicants submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on February 4, 2022, the applicants sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The applicants provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

Based on the written submissions of the applicants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on February 4, 2022 and are deemed to have been received by the tenants on February 9, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

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

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

Are the applicants entitled to recover the filing fee for this application 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 applicants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not one of the applicants and was signed by the tenants on May 1, 2021, indicating a monthly rent of \$2,380.00, due on the first day of each month for a tenancy commencing on May 3, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2022, for \$7,438.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 January 18, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 3:00 pm on January 4, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenants on January 4, 2022
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicants 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 applicants 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.

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement

- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or **changes to parties or their agents**
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (this is often considered proof that the tenant did not pay rent); and
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match either of the landlords named on the Application for Dispute Resolution. There is also no evidence or documentation showing that the applicants are the owners of the rental property or are otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the applicants' request for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

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

Conclusion

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

I dismiss the applicants' request 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: February 23, 2022