



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-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 and utilities, to obtain monetary compensation for unpaid rent and utilities, and to recover the filing fee paid for the application.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 26, 2022, the landlords sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

The Proof of Service Notice of Direct Request Proceeding also declares that the landlords served the tenant the Notice of Dispute Resolution Proceeding – Direct Request by handing the documents to Person J.S. The landlords had a witness and Person J.S. sign the Proof of Service Notice of Direct Request Proceeding to confirm this mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent and utilities 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 this type of matter, the landlords must prove they served the tenant 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*.

Section 89(1) of the *Act* does not allow for the Notice of Dispute Resolution Proceeding - Direct Request to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Dispute Resolution Proceeding - Direct Request to be left with an adult who apparently resides with the tenant, only when considering the issuance of an Order of Possession for the landlord.

The Proof of Service Notice of Direct Request Proceeding that was submitted by the landlords indicates service to Person J.S., but there is no indication or documentation in the evidence that the person who received the documents is an adult, or that they apparently reside with the tenant.

For this reason, I cannot confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to Person J.S.

The landlords have also indicated they sent the Direct Request documents to the tenant by e-mail.

Policy Guideline #39 provides that service by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

I find the landlords have not submitted a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

I also find there is no evidence to demonstrate that the tenant indicated documents could be served by e-mail.

For this reason, I cannot confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the tenant by e-mail.

As I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request in compliance with section 89 of the *Act*, the landlords' application for an Order of Possession and a Monetary Order for unpaid rent and utilities 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 and utilities 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: February 09, 2022

Residential Tenancy Branch