



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0849038 BC LTD
and [tenant name suppressed to protect privacy]

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 filed by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee.

The Landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that they served the Tenant with a Notice of Dispute Resolution Proceeding and supporting evidence by Xpresspost on February 11, 2022. Service in this manner was supported by Canada Post receipts which confirmed the date and time of purchase and included the tracking number.

In this type of matter, the Landlord must prove they served the Tenant with the Notice of Direct Request Proceeding in accordance with section 89 of the Act, which permits service “by sending a copy by registered mail to the address at which the person resides...”

The definition of registered mail is set out in section 1 of the Act as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

In this case, the Canada Post receipts provided confirm that a signature was required. Therefore, as a signature was required to confirm delivery to the Tenant, I find that service by Xpresspost meets the definition of registered mail as set out in the Act.

Therefore, pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on February 16, 2022, five days after they were mailed.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent pursuant to sections 46 and 67 of the Act?
3. Is the Landlord entitled to recover the filing fee 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 Landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement signed by the parties on November 13, 2020, indicating a monthly rent in the amount of \$1,195.00 due on the first day of each month, for a tenancy commencing on November 13, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 19, 2022 for \$2,635.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the Tenant 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 31, 2022;
- A copy of a signed Proof of Service Notice to End Tenancy document which indicates that the 10 Day Notice was served on the Tenant by sending a copy to an email address provided as an address for service on January 19, 2022;
- A copy of an email to the Tenant dated January 19, 2022 requesting payment of “rent for 2 months”; and
- A copy of an incomplete Direct Request Worksheet.

Analysis

In an ex parte Direct Request Proceeding, the onus is on the landlord 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 landlord 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 case, I find that the evidentiary material gives rise to issues that cannot be resolved in a Direct Request Proceeding.

First, I find I am unable to confirm the 10 Day Notice was served on the tenant in accordance with the Act and Policy Guideline #39. The Landlord has indicated that the 10 Day Notice was served on the Tenant by email on January 19, 2022. However, Policy Guideline #39 confirms the following is sufficient proof of service by email:

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

RTB 51 – Address for Service or other document that sets out the party's email address for service

In this case, the Landlord provided a copy of an email dated January 19, 2022. However, the email does not show the email address used. In addition, the Landlord did not submit an Address for Service form or other document that confirms the Tenant's email address for service.

As a result, I am unable to confirm that the Tenant was served with the 10 Day Notice at an email address provided for service of documents in accordance with the Act and Policy Guideline #39.

Second, I find I am unable to determine the amount of rent due. The 10 Day Notice indicates that rent of \$2,635.00 remained unpaid as of January 19, 2022. However, the Monetary Order Worksheet indicates that rent of \$1,195.00 was unpaid on December 1, 2021, and on January 1, 2022, and that no partial payments were received, which would leave \$2,390.00 due at the time the 10 Day Notice was issued.

Further, the Direct Request Worksheet states that the amount listed for unpaid rent on the 10 Day Notice was \$3,830.00. However, as noted above, the 10 Day Notice indicated that rent of \$2,635.00 was unpaid as of January 19, 2022.

As a result, due to discrepancies in the evidentiary material, I find I am unable to confirm the amount of rent due.

Third, I find I am unable to confirm the correct address of the rental unit. Policy Guideline #39 confirms that a landlord must provide certain documents with an application for dispute resolution by Direct Request, including documents showing changes to the tenancy agreement or tenancy. In this case, the rental address provided in the application does not match the rental address that appears in the tenancy agreement.

To summarize, I find I am not satisfied that the evidentiary material provides sufficient proof of service of the 10 Day Notice by email, of the amount of rent due, or of the correct rental address.

Considering these significant issues, 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 has not been successful, I order that the Landlord's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Landlord's requests for an order of possession and a monetary order for unpaid rent are dismissed with leave to reapply.

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: March 2, 2022

Residential Tenancy Branch