



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-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 landlord to obtain an Order of Possession based on unpaid rent, and to recover the filing fee paid for the application.

The landlord submitted two copies of a Proof of Service Notice of Direct Request Proceeding form which declares that on February 11, 2022, the landlord sent tenant W.N. the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided two copies of the Canada Post Customer Receipt containing the tracking number to confirm they served tenant W.N.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

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 type of matter, the landlord must prove they served the tenants 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* and in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #12 on Service Provisions provides the following requirement:

“Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. ”

The landlord has not submitted a copy of a Proof of Service Notice of Direct Request Proceeding form or any other evidence to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to tenant C.T. I find that I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to tenant C.T. which is a requirement of the Direct Request process.

The landlord indicates that they sent tenant W.N. the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application by registered mail on February 11, 2022.

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.*” Policy Guideline #12 on Service Provisions goes on to clarify that this “*includes Express post, if the signature option is used.*”

I find that the tracking number provided by the landlord with the Proof of Service Notice of Direct Request Proceeding form for tenant W.N. is for a package sent by Canada Post’s Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post’s Online Tracking System shows that a signature was not required for the delivery of this Express post package and, as such, it does not meet the definition of registered mail as defined under the *Act*.

Since I find that the landlord has not served tenant W.N. with notice of this application in accordance with section 89 of the *Act* and I can not confirm service of the Notice of

Dispute Resolution Proceeding - Direct Request to tenant C.T., I dismiss the landlord's application for an Order of Possession for unpaid rent with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for an Order of Possession for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the filing fee paid for this application 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 04, 2022

Residential Tenancy Branch