



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 indicates that they sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm this service.

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 each 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*.

I note that the landlord submitted a copy of two Canada Post Customer Receipts containing tracking numbers to confirm a package was sent to each tenant on March 17, 2022. However, the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form which would include a landlord statement establishing service of the Notice of Dispute Resolution Proceeding - Direct Request documents to each tenant. Without this accompanying statement, I find that I am not able to confirm what documents were included in the packages sent by registered mail on March 17, 2022.

I find that I am not able to confirm service of the Notices of Dispute Resolution Proceeding - Direct Request to the tenants, which is a requirement of the Direct Request process, and for this reason the landlord's application for an Order of Possession for unpaid rent is dismissed 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

I dismiss the landlord's application for an Order of Possession for unpaid rent with leave to reapply.

I dismiss the landlord's 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: April 07, 2022

Residential Tenancy Branch