



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 landlord to obtain an Order of Possession based on unpaid rent or utilities, to obtain monetary compensation for unpaid rent or utilities, and to recover the filing fee paid for the application.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on May 21, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent or utilities pursuant to section 67 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 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*.

The Proof of Service Notice of Direct Request Proceeding instructs the landlord to attach a completed Canada Post Registered Mail Receipt to confirm service.

I note that the landlord hand-wrote a tracking number on the Proof of Service form; however, I find the landlord has not submitted a copy of the Canada Post Registered Mail Receipt itself.

I also note that 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.*” 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 on the Proof of Service Notice of Direct Request Proceeding 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 mailing and, as such, it does not meet the definition of registered mail as defined under the *Act*.

I find that the landlord has not served the tenant with notice of this application in accordance with section 89 of the *Act*, and for this reason I dismiss the landlord’s application for an Order of Possession and a Monetary Order for unpaid rent or utilities 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 and a Monetary Order for unpaid rent or utilities 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: June 16, 2022

Residential Tenancy Branch