



Dispute Resolution Services

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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 a copy of an unwitnessed Proof of Service Notice of Direct Request Proceeding form which declares that on July 14, 2022, the landlord personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request.

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 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*. Policy Guideline # 39 provides the key elements that need to be considered when making an application for Direct Request

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the tenant, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the landlord deliver the document(s).**

On the Proof of Service Notice of Direct Request Proceeding form there is no signature of a witness, or a signature of the person who received the documents, to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant.

As I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant, which is a requirement of the Direct Request process, the landlord's application for an Order of Possession based on 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 based on 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: August 15, 2022

Residential Tenancy Branch