



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUST VIRANI CONSULTING
INC 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 by the landlord to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on July 14, 2022, the landlord sent each tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail and attached the Notices of Dispute Resolution Proceeding – Direct Request to the door of the rental unit.

The landlord provided a copy of e-mails exchanged with the tenants indicating the tenants agreed to receive documents by e-mail. The landlord also submitted a copy of two outgoing e-mails sent to the tenants, dated July 14, 2022.

Issue(s) 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 monetary compensation for unpaid rent 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 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. 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 forms there is no signature of a witness to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenants by attaching the documents to the tenants' door.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the door of the rental unit.

The landlord has also indicated they sent the Direct Request documents to the tenants by e-mail. Policy Guideline #39 provides that service by e-mail may be proven by providing:

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

The landlord submitted a copy of two outgoing e-mails addressed to the tenants. However, I find these e-mails do not show whether any documents were attached to the e-mails.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenants by e-mail.

For these reasons, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

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

Conclusion

I dismiss the landlord's application for an Order of Possession and a Monetary Order 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: August 05, 2022

Residential Tenancy Branch