



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the applicant on August 15, 2022.

The applicant submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 1, 2022, the applicant posted the Notice of Dispute Resolution Proceeding - Direct Request to the door of the rental unit. The applicant had a witness sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service.

Issue(s) to be Decided

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

Is the applicant entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The applicant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on November 8, 2021, indicating a monthly rent of \$1,797.00, due on the last day of each month for a tenancy commencing on December 1, 2021
- A copy of a Notice of Rent Increase form dated August 2, 2022, showing the rent would be increased from \$1,797.00 to the monthly rent amount of \$1,823.00 as of December 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 2, 2022, for \$1,797.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 12, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 12:22 pm on August 2, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 applicant 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 applicant 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 applicant submitted a Proof of Service Notice of Direct Request Proceeding form indicating the Direct Request documents were attached to the tenant's door on August 1, 2022. However, I find the applicant did not submit their Application for Dispute Resolution until August 15, 2022. I also find that the Notice of Dispute Resolution Proceeding – Direct Request was not made available for service until August 31, 2022.

I find 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.

Furthermore, I find that the landlord's name on the tenancy agreement is a business and does not match the individual landlord's name on the Application for Dispute Resolution. I note the applicant signed the Notice of Rent Increase form; however, I find there is no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to have orders issued in their name.

The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

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

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

Conclusion

I dismiss the applicant's request for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the applicant's request 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: September 27, 2022

Residential Tenancy Branch