



Dispute Resolution Services

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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 July 28, 2022.

The applicant submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 18, 2022, the applicant served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by handing the documents to Person S.R. The applicant had Person S.R. sign the Proof of Service Notice of Direct Request Proceeding forms 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 tenants on January 19, 2022, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on February 1, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 5, 2022, for \$900.00 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 July 18, 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 door of the rental unit
- 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 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*.

On the Proof of Service Notice of Direct Request Proceeding forms, the applicant has indicated they served the Direct Request documents to Person S.R., and not to either tenant, Person S.K.-A. or Person R.H.

I also 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. There is also 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.

Finally, I note that the landlord must prove they served the tenants with the 10 Day Notice in accordance with section 88 of the *Act*. The Proof of Service Notice to End Tenancy indicates the 10 Day Notice was served to Person G.H. and not to either tenant.

Furthermore, the first page of the proof of service form indicates the 10 Day Notice was served on July 5, 2022; however, the second page states it was served on June 3, 2022.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. I find these discrepancies raise questions that cannot be addressed in a Direct Request Proceeding.

For this reason, 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 14, 2022

Residential Tenancy Branch