



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 and utilities, to obtain monetary compensation for unpaid rent and utilities, 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 1, 2022, the landlord served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail and by attaching the documents to the door of the rental unit. The landlord provided a copy of two Canada Post Customer Receipts containing the tracking numbers to confirm the mailings in fact took place on August 25, 2022.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and 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 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* 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 numbers provided by the landlord with the Proof of Service Notice of Direct Request Proceeding forms are for packages 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 signatures were not required for the delivery of these Express post mailings and, as such, they do not meet the definition of registered mail as defined under the *Act*.

I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding – Direct Request to the tenants by registered mail.

The landlord has also indicated the Direct Request documents were attached to the tenants’ door. 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 Notices of Dispute Resolution Proceeding - Direct Request to the tenants.

I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding – Direct Request to the tenants by posting to the door.

As I am not able to confirm service of the Notices of Dispute Resolution Proceeding - Direct Request to the tenants, which is a requirement of the Direct Request process, the landlord’s application for an Order of Possession and a Monetary Order for unpaid rent and utilities 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 and a Monetary Order for unpaid rent and utilities 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: September 21, 2022

Residential Tenancy Branch