

DECISION

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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Issue(s) to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a copy of two Canada Post Customer Receipts containing tracking numbers to confirm the landlord sent each tenant a package by registered mail on September 28, 2022.

Analysis

Is the landlord entitled to an Order of Possession based on unpaid rent?

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 on Direct Requests provides the following requirements:

“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”

I note that the landlord submitted a copy of two Canada Post Customer Receipts containing tracking number to confirm package were sent to the tenants on September 28, 2022. However, I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding forms which are a requirement of the Direct Request process as detailed in Policy Guideline #39.

I find the landlord has not submitted the documents required for a Direct Request and for this reason, the landlord’s application for an Order of Possession for unpaid rent is dismissed with leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was not successful in this application, the landlord's Application for authorization to recover the filing fee for this application is dismissed, without leave to reapply.

Conclusion

The landlord's Application for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the *Act* is dismissed, with leave to reapply.

The landlord's Application for authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act* is dismissed, 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: October 31, 2022

Residential Tenancy Branch