

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
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$2,706.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) was served to the tenant by attaching the Proceeding Package to the door of the rental unit and by sending the Proceeding Package by e-mail.

Issue(s) to be decided

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

Is the landlord entitled to a Monetary Order for unpaid rent? (\$2,706.00)

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

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 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 landlord has indicated they posted the Proceeding Package to the door of the rental unit. Policy Guideline # 39 provides that 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 Landlord's Notice of Direct Request Proceeding there is no signature of a witness to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant.

The landlord has also indicated they sent the Proceeding Package to the tenant 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

I find the landlord has not submitted a copy of the outgoing e-mail containing the Proceeding Package documents as attachments to confirm this service.

I also find there is no evidence to demonstrate that the tenant's e-mail address was provided specifically for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

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.

For this reason, 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 that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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 a Monetary Order for unpaid rent, pursuant to section 67 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: November 3, 2022

Residential Tenancy Branch