

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 (\$1,510.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted one signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenants were served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by e-mail. The landlord submitted a copy of the outgoing e-mails containing the Proceeding Package documents as attachments to confirm this service.

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? (\$1,510.00)

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

Analysis

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.

Section 89 of the Act provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service** by the person.*”

Policy Guideline #12 on Service Provisions provides that “*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*”

I find that the landlord has sent the Notice of Dispute Resolution Proceeding - Direct Request to each tenant by e-mail. However, I find there is no evidence to demonstrate that the tenants indicated documents could be served by e-mail.

I find the landlord has not demonstrated that the tenants' e-mail addresses were 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 tenants in accordance with the legislation.

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 the landlord is not entitled to recover the 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 tenants, 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 15, 2022

Residential Tenancy Branch