

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 landlords' 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 (\$1,600.00)
- 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 landlords submitted two signed Proof of Service Landlord's Notice of Direct Request Proceeding forms which declares that the tenants were served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by handing both sets of documents to Tenant P.A.W.

Issue(s) to be decided

Are the landlords entitled to an Order of Possession based on unpaid rent?

Are the landlords entitled to a Monetary Order for unpaid rent? (\$1,600.00)

Are the landlords 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 landlords 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 landlords 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 landlords 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 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 Landlord's Notice of Direct Request Proceeding forms there is no signature of a witness, or of the person who received the documents, 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, which is a requirement of the Direct Request process.

For this reason, the landlords' application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' 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 landlords' Application for a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*, is dismissed, with leave to reapply.

The landlords' 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