

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 applicant'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 (\$4,572.49)
- 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 applicant submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on November 4, 2022 they served the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail to the rental unit. The applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. In accordance with sections 89(1) and 90 of the Act and based on the written submissions and evidence of the applicant:

- I find that the applicant sent the Proceeding Package to the tenant on November 4, 2022 by registered mail, and it was deemed to have been received by the tenant on November 9, 2022, the fifth day after it was mailed.

Issues to be decided

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

Is the applicant entitled to a Monetary Order for unpaid rent? (\$4,572.49)

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

Background and Evidence

The applicant submitted the following evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and signed by the tenant on April 29, 2004, indicating a monthly rent of \$900.00, due on the first day of the month for a tenancy commencing on June 1, 2004;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 4, 2022, for \$4,572.49 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 17, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant by leaving a copy in the tenant's mailbox at 2:00 pm on October 4, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 applicant 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.

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement
- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or **changes to parties or their agents**
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute

Resolution. There is also no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

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

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

The applicant'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: December 12, 2022

Residential Tenancy Branch