

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)

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 tenants were served with the Notice of Dispute Resolution Proceeding - Direct Request (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 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 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.

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

The landlord has indicated that they sent the Notice of Dispute Resolution Proceeding - Direct Request to the tenants by e-mail. However, I find the landlord has not submitted a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenants and for this reason, the landlord's application for an Order of Possession 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 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 7, 2022

Residential Tenancy Branch