



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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 an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that December 27, 2017, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on January 01, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,250.00, due on the 15th day of each month for a tenancy commencing on March 15, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 16, 2017, which the landlord contends was served to the tenant on December 17, 2017, for \$1,250.00 in unpaid rent due on December 15, 2017, with a stated effective vacancy date of December 27, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,250.00 for outstanding rent, comprised of the balance of unpaid rent owed by December 15, 2017;
- Copies of documents which, according to the landlord, depict text message exchanges between the tenant and landlord;
- Electronic photographs, which the landlord asserts, depict the December 16, 2017 Notice to End Tenancy for Unpaid Rent posted to the door of the rental;
- A document drafted by the landlord as an addendum to the application for dispute resolution;

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

I have reviewed all documentary evidence provided by the landlord. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of

the Notice to End Tenancy” form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

C. PROOF OF SERVICE

C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director’s delegate (“the director”) may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to prove that the Notice to End Tenancy was served in accordance with the *Act*. I find that the landlord has not provided a Proof of Service of the Notice to End Tenancy form to prove that the Notice to End Tenancy was served to the tenant in accordance with the *Act* as attested in the application.

The landlord has provided a written statement as an addendum to the application for dispute resolution which provides that the landlord attached the Notice to End Tenancy to the door of the rental unit, and also slipped a copy of the Notice under the door. The landlord has also provided electronic copies of photographs, which, according to the landlord, serve to prove that the Notice to End Tenancy was attached to the door of the rental unit. However, the photographs depict an envelope affixed to a door, with a message written on the envelope which provides that the envelope contains the Notice to End Tenancy.

I find that the photographs provided by the landlord do not sufficiently prove that the Notice to End Tenancy was served in accordance with the *Act*, as they only demonstrate that an envelope was attached to a door, but do not provide any proof as to the contents of the envelope, and do not demonstrate that the door to which the envelope was affixed was the door of the rental unit.

Notwithstanding the landlord's effort to prove service of the Notice to End Tenancy by providing an electronic photograph, I find that the landlord is still required to provide a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of a witness to confirm that the Notice to End Tenancy was served in accordance with the Act.

The landlord also contends that he attempted service of the Notice to End Tenancy by way of slipping it under the door of the rental unit. I find that, by serving the Notice to End Tenancy by way of slipping it under the door of the rental unit, the landlord attempted to serve the Notice in a manner which is not consistent with the service provisions for documents as provided under section 88 of the *Act*. I further find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice to End Tenancy in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

I find that the landlord has not demonstrated that service of the Notice to End Tenancy was witnessed and completed in accordance with the Act, nor has the landlord provided a completed Proof of Service of the Notice to End Tenancy form, which includes a name and signature of a witness to confirm service of the Notice, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the Notice to End Tenancy to the tenant, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

Conclusion

The landlord's application is dismissed with 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 29, 2017

Residential Tenancy Branch