



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM LTD AS AGENT FOR COUNTESS GARDENS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 23, 2018, the landlord served the tenants with the Notices of Direct Request Proceeding via posting on the unit. The Proof of Service forms also states that the service was witnessed by “KR” and a signature for “KR” is included on the form.

Section 89(2) of the Act permits applications for orders of possession to be served by posting on the unit. It does not permit direct requests for monetary orders to be served by this method. Such requests must be served in accordance with the methods set out in section 89(1), which include service by registered mail or personal service.

For reasons stated below, I am dismissing the landlord’s application, with leave to reapply, on other grounds. However, I note that were this not the case, I would likely have dismissed the landlord’s application for a monetary order, with leave to reapply.

Issues 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?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord submitted evidentiary material including:

- Two copies of the first page of two 10 Day Notices to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 2, 2018 for \$2,400.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 15, 2018.

The Notice restates section 46(4) of the Act which provides that the tenants have 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.

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 of 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.

The onus is on the landlord to present evidentiary material that 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 landlord 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.

The landlord was obligated to provide a copy of the Notice, in its complete form, to the tenants. By only providing copies of the first page of each Notice, the landlord has not satisfied me that this occurred. The second page contains important information regarding the dispute resolution process which the tenant is entitled to receive.

The landlord has failed to meet the higher evidentiary burden placed upon it in an *ex parte* hearing. Accordingly, I dismiss the landlord’s application, with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I dismiss the landlord's application for a monetary Order 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: November 29, 2018

Residential Tenancy Branch