



Dispute Resolution Services

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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 landlords (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 March 27, 2020, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by “DP” and a signature for “DP” is included on the forms. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 27, 2020.

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

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

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$1,373.44.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$970.00, due on the first day of each month for a tenancy commencing on May 01, 2010;
- Copies of "Notice of Rent Increase" forms provided to the tenants during the course of the tenancy, which show that the monthly rent was increased to the current amount of \$1,153.00, effective May 01, 2019.
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$1,373.44.00, comprised of the balance of unpaid rent due by March 01, 2020. The worksheet also depicts that a sum of \$1,873.44 was purportedly owed by the tenants by February 22, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 24, 2020, which the landlord states was served to the tenants on February 24, 2020, for \$1,873.44 in unpaid rent due on February 22, 2020, with a stated effective vacancy date of March 09, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on February 24, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

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

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on February 27, 2020, three days after its posting.

I find that as of May 01, 2019, the tenants were obligated to pay monthly rent in the amount of \$1,153.00, as the landlord has established that the monthly rent amount was increased from the initial amount as established in the tenancy agreement, to the current amount of \$1,153.00, as per the Notice of Rent Increase forms.

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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the 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. 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 Direct Request process is a mechanism that allows a landlord to apply for an expedited decision, and as such, the landlord must follow and submit documentation exactly as prescribed by the *Act* and Policy Guideline #39 – Direct Requests. There can be no omissions or deficiencies with items being left open to interpretation or inference.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenants, in this case, February 22, 2020. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for the month of March 2020, and will therefore make a determination based on the amount of unpaid rent indicated as being due by February 22, 2020, as indicated on the Notice provided to the tenants.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the month of March 2020, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the February 24, 2020 Notice issued to the tenants, which alerted the tenants to unpaid rent due by February 22, 2020.

According to the Direct Request worksheet provided by the landlord, there was an outstanding balance of unpaid rent owed by February 22, 2020 in the amount of \$1,873.44, which is an amount that exceeds the monthly rent owed under the tenancy. The monthly rent owed each month is \$1,153.00. The landlord has not provided any information to clarify why a sum for unpaid rent was owed for the month of February which exceeded the monthly rent owed under the tenancy.

Section 59(2)(b) of the *Act* provides that an application for dispute resolution must provide the full particulars of the dispute that is to be the subject of the dispute resolution proceeding. I find that, with respect to the portion of the application that relates to a request for a monetary order, the landlord has not provided sufficient and complete particulars, such as the details of the calculation of the amount being sought for unpaid rent.

Rather, the landlord has not provided any particulars to demonstrate how the amount of unpaid rent in the amount of \$1,873.44, due by February 22, 2020, was calculated. Therefore, I find that portion of the landlord's application does not comply with section 59(2)(b) of the *Act*.

On the Direct Request Worksheet, the landlord has not provided complete details to depict the accounting of the rental arrears in amount of \$1,873.44 claimed as being owed by the tenant. Of particular note is that the landlord provides an "opening balance" of \$1,873.44 claimed as being owed for unpaid rent as of February 22, 2020, without providing any supporting information or accounting of how that sum was calculated, or whether that amount included rent owed from previous months that may have been carried over to the month of February 2020.

By drafting the Direct Request Worksheet beginning with an outstanding amount being owed as a general sum by February 22, 2020, in the amount of \$1,873.44, without providing any information as to the nature of the sum being carried forward and whether it relates to unpaid rent or a charge arising from an item that cannot be considered by way of the Direct Request process, I find that the landlord has not adhered to section 59(2)(b) of the *Act*, as the landlord has not provided any particulars with respect to this portion of the application.

I find that the landlord has submitted an Application for Dispute Resolution by Direct Request which does not provide the full particulars with respect to the calculation of rent purportedly owed. I find that the evidentiary material presented by the landlord brings into question the correct amount of rental arrears owed by the tenant.

I further find that as a result of the incomplete calculation found on the landlord's Direct Request Worksheet, as described above, it brings into question whether the Notice provided to the tenants alerted the tenants to an incorrect amount of rent owing, as the amount indicated on the Notice has not been substantiated by way of evidentiary material that clearly provides an accounting of the unpaid rent owed purportedly owed by the tenant. Therefore, it leaves open the possibility that the landlord's request for an Order of Possession based on unpaid rent may be based on an unsubstantiated and unproven amount of rent purportedly owed.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the 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 narrow scope of a Direct Request Proceeding.

I find that there are deficiencies with this application, as outlined above, which cannot be clarified within the narrow scope of the Direct Request process. 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. Therefore, I dismiss the landlord's application for an Order of Possession based on unpaid rent 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.

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

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.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application 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: April 02, 2020

Residential Tenancy Branch