Dispute Resolution Services

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 form on which the landlord asserts that on March 27, 2020, the landlord's agent served the tenant with the Notice of Direct Request Proceeding documents via registered mail.

The landlord submitted a Canada Post Customer Receipt on which a name is provided for the intended recipient which does not match the name of the tenant noted on the first page of this decision.

On the Canada Post Customer Receipt, under the section where the name of the intended recipient is to be written, the receipt depicts that the registered mail item was addressed to an individual other than the tenant, as the receipt shows that the mailed item was addressed to a person bearing the initials "MN".

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*?

Analysis

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.

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 landlords 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.

I have reviewed all relevant documentary evidence provided by the landlord. Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> (a) by leaving a copy with the person;

> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.
>
> (2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:
>
> (a) by leaving a copy with the tenant;
>
> (b) by sending a copy by registered mail to the address at which the tenant resides;
>
> (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
>
> (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

In the Direct Request process, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89(1) and (2) of the *Act*, which permit service "by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord." The definition of registered mail is set out in section 1 of the *Act* as "any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available."

Under the provisions of Policy Guideline #39 – Direct Requests, the onus is on the landlord to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Policy Guideline #39 states that the landlord must complete and submit the Proof of Service Notice of Direct Request Proceeding form (form RTB-44) that was included as part of the landlord's Direct Request package.

Policy Guideline #39 provides, in part, the following:

> *After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.*

The Proof of Service Notice of Direct Request Proceeding form (form RTB-44) provides the following instructions to the landlord if the Notice of Dispute Resolution Proceeding Package was served to the tenant via registered mail:

> *"Attach a completed Canada Post Registered Mail Receipt, including tracking number on a separate page."*

On the Proof of Service of the Notice of Direct Request Proceeding form, the landlord has indicated that the tenant was served with the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the landlord must provide evidentiary material, in the form of a Canada Post Registered Mail receipt or ticket which includes the tracking number, as well as the name of the person to whom the registered mail item was addressed, as proof of service via registered mail.

The landlord has not provided any documentary evidence, such as a Canada Post customer receipt or registered mail ticket containing the tracking number, to confirm the mailing and to demonstrate that the tenant was served with the Direct Request Proceeding documents by way registered mail.

I find that there is no evidentiary material before me to prove that the landlord served the Direct Request Proceeding documents to the tenant by way of registered mail. The landlord has not provided a Canada Post Registered Mail receipt or registered mail ticket with a tracking number showing that the registered mail item was addressed to the tenant, and furthermore, the landlord has not included the name and signature of a witness on the Proof of Service form to confirm that service of the documents was carried out by way of registered mail. Therefore, I find that I cannot confirm that the tenant has been served with the Direct Request Proceeding documents in accordance with the *Act*.

Based on the foregoing, I find that the landlord has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act.* Therefore, I dismiss the landlord's application for an Order of Possession based on unpaid rent and a monetary Order with leave to reapply.

The landlord did provide a copy of a Canada Post Registered Mail receipt which was addressed to an individual other than the tenant, as the Canada Post Registered Mail receipt depicts that a mailed item was address to an individual bearing the initials "MN". However, this does not serve to prove that the tenant was served with the Notice of Direct Request Proceeding documents by way of registered mail.

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, and the requirements for service of documents, as

prescribed in Section 89 of the *Act*, 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 06, 2020

Residential Tenancy Branch