Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MICHAEL MOSER CONTRACTING and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-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 Applicant to obtain an order of possession based on unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Applicant on September 13, 2021.

The Applicant submitted a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on September 23, 2021, the Applicant served the Tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting to the door of the rental unit.

Based on the written submissions and evidence of the Applicant and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 23, 2021 and are deemed to have been received by the Tenant on September 26, 2021, the third day after they were posted to the door.

Issue to be Decided

Is the Applicant entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 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.

The Applicant submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which names a Landlord who is not the Applicant and signed by the Tenant on March 20, 2020, indicating a

monthly rent of $825.00, due on the first day of each month for a tenancy commencing on April 1, 2020;

- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated September 2, 2021, for $825.00 in unpaid rent. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 12, 2021;

- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the Tenant at 8:45pm on September 2, 2021; and;

- a copy of a Direct Request Worksheet.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the Applicant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material 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 Applicant 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.

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement
- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or **changes to parties or their agents**
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (this is often considered proof that the tenant did not pay rent); and
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities

I have reviewed all documentary evidence and I find that the Landlord's name on the tenancy agreement does not match the Landlord's name on the Application for Dispute Resolution. There is also no evidence or documentation showing that the Applicant is

the owner of the rental property or is otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the Landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the Applicant's request for an order of possession based on unpaid rent is dismissed with leave to reapply.

Conclusion

I dismiss the Applicant's request for an order of possession based on unpaid rent 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: October 20, 2021

Residential Tenancy Branch