

DECISION

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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The landlord submitted a copy of a Proof of Service Notice of Direct Request Proceeding form signed by the tenant which declares that on November 10, 2022, they personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package). In accordance with section 89(1) of the Act and based on the written submissions and evidence of the landlord:

- I find that the landlord personally served the Proceeding Package to tenant G.H. on November 10, 2022.

Issues to be decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

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 landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and signed by the tenant on July 27, 2022, indicating a monthly rent of \$3,000.00, due on the first day of each month for a tenancy commencing on August 1, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 3, 2022, for \$3,000.00 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 October 14, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by e-mail to a pre-agreed upon e-mail address for service of documents at 8:47 pm on October 3, 2022. The landlord provided a copy of the outgoing e-mail to confirm this service;
- a copy of a management agreement dated June 20, 2022 showing the applicant is the agent for the landlord;
- a copy of a receipt showing partial payment in the amount of \$2,000.00 was received on October 24, 2022 for use and occupancy only; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

Analysis

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 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 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.

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*.

Policy Guideline #39 provides that service of the 10 Day Notice by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, **and any attachments included in the email** and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

I note that the landlord provided a copy of the outgoing e-mail showing the email address used and the date it was sent, however, I find the email does not include any attachments.

I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request Proceeding and for this reason, the landlord's application for an Order of Possession based on the 10 Day Notice dated October 3, 2022 is dismissed, with leave to reapply with a copy of the outgoing email that includes any attachment(s).

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

The landlord's application for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act is dismissed, with leave to reapply.

The landlord's application for authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act is dismissed, 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: December 16, 2022

Residential Tenancy Branch