



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DIRECT REQUEST DECISION**

Dispute Codes: OPR, MNR

### Introduction

This application proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act. The landlord seeks an Order of Possession and a monetary order for rental arrears based on a 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 21, 2014 at 2:01 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act, (*the Act*), determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent pursuant to sections 55 and 67 of the Act?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding and Proof of Service of the Ten-Day Notice, verifying service to the tenant,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 9, 2014 for \$1,290.00 in rental arrears, and
- A copy of a residential tenancy agreement which was signed by the tenant on May 28, 2013, and was signed by an individual representing the corporate landlord but the name is not clear and there is no date. The copy of the tenancy

agreement confirms that the rent is \$950.00 per month, due on the first day of each month.

No ledger was included, but the testimonial evidence filed by the landlord indicates that the tenant accrued arrears for \$1,240.00 and the landlord is seeking compensation in this amount and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

### Analysis

Submitted into evidence was a copy of a tenancy agreement that was originally between the landlord and a party not named as respondent. However, although both the tenant and the landlord had signed the agreement, the landlord's signature is not dated and the name of the individual who signed on behalf of the landlord is not clarified.

This is an application to proceed by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act. The Fact Sheet containing directions and the requirements to qualify to apply for a resolution under this section indicates that the following mandatory documentation must accompany the Application:

- Copy of the 10 Day Notice to End Tenancy
- Copy of the Tenancy Agreement
- Proof of Service of the 10 Day Notice to End Tenancy

I find that, while this application did include a copy of a tenancy agreement, the agreement was not compliant with section 13 of the Act. Section 13 sets out the mandatory terms that must be included within the tenancy agreement. The agreement must be signed and dated by both the landlord and the tenant.

I further find that the tenancy agreement also contains various noncompliant terms that affect its validity.

I find that the tenancy term that frees the landlord from providing any heat source for the unit, is in violation of section 32 of the Act. I find that the terms in the agreement that require the tenant to perform renovation labour including the cost of some materials fall beyond the scope of the Act. The contract also delegates emergency repairs to the tenant which contravenes section 33 of the Act. The terms that impose "fines" and "penalties" for late payments and NSF charges indicate amounts that exceed the limits imposed by the legislation.

Given the above, I find that the landlord has not submitted a valid and enforceable tenancy agreement as required in order to proceed with a Direct Request process.

In addition, with respect to the monetary amount being claimed, I find that the landlord has not sufficiently verified precisely what this amount represents. No tenant account ledger was provided. However, according to the tenancy agreement, the monthly rental rate is \$950.00, but the claim is for \$1,240.00. I find that the 10-Day Notice to End Tenancy for Unpaid Rent also wrongly included a demand for payment of \$50.00 NSF charges. As mentioned earlier in this decision, this exceeds the amount permitted under the Act.

Given the above, I find that this matter may not proceed by way of direct proceeding. It is therefore necessary to dismiss this application, and I do so granting the landlord leave to reapply.

The landlord is at liberty to make an application to pursue this matter through a regular teleconference hearing that would permit verbal testimony to be given regarding the specific terms of the tenancy agreement between the parties.

I hereby dismiss the landlord's application with leave to reapply for a participatory hearing in which testimony can be given with respect to the tenancy agreement.

### **Conclusion**

The landlord is not successful in the Direct Request application, due to missing information and irregularities in the tenancy agreement and it is dismissed with leave to reapply for a participatory hearing.

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: January 23, 2014

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Residential Tenancy Branch

