



# 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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on December 21, 2017, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. 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 December 21, 2017.

### 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

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenants on November 1, 2017, indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on November 1, 2017;
- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent for \$800.00 in unpaid rent (the first 10 Day Notice). The first 10 Day Notice provides that the tenants

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 December 4, 2017;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the first 10 Day Notice was placed in the tenants' mailbox or mail slot at 10:00 am on December 4, 2017;
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent dated December 13, 2017 for \$800.00 in unpaid rent (the second 10 Day Notice). The second 10 Day Notice provides that the tenants 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 December 23, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

Section 52 of the Act provides the following requirements regarding the form and content of notices to end tenancy:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed **and dated** by the landlord or tenant giving the notice,*
  - (b) give the address of the rental unit,*
  - (c) state the effective date of the notice,...and*
  - (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the first 10 Day Notice is not dated. I find that this omission invalidates the first 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the first 10 Day Notice, without leave to reapply.

The first 10 Day Notice, with an effective date of December 4, 2017, is cancelled and of no force or effect.

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

I find that the landlord has not provided any evidence to confirm that the second 10 Day Notice was served to the tenants.

As I am not able to confirm service of the second 10 Day Notice to the tenants, which is a requirement of the Direct Request proceeding, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the second 10 Day Notice is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notices the landlord's application for a Monetary Order is dismissed, with leave to reapply.

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 on the basis of the first 10 Day Notice is dismissed, without leave to reapply.

The first 10 Day Notice, with an effective date of December 4, 2017 is cancelled and of no force or effect.

The landlord's application for an Order of Possession based on the second 10 Day Notice is dismissed with leave to reapply.

The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the filing fee paid for this application 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 22, 2017

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Residential Tenancy Branch