



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPUM-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 unpaid utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 13, 2018, the landlord left the Notice of Direct Request Proceeding at the door of the rental unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

### 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 and unpaid utilities 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 landlord and the tenant on January 03, 2018, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on January 03, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated March 03, 2018, for \$1,450.00 in unpaid rent and \$339.03 in unpaid utilities. 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 March 12, 2018;

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was e-mailed to the tenant on March 03, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by registered mail, leaving a copy with the tenant, leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy the landlord has indicated that they e-mailed the 10 Day Notice to the tenant which is not a method of service permitted under section 88 of the *Act*.

I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act* and for this reason I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of March 03, 2018, without leave to reapply.

The 10 Day Notice of March 03, 2018, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent and unpaid utilities with leave to reapply.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlord wants to apply through the Direct Request process.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I note that the landlord did not provide a written demand letter and would not have been able to claim for utilities if the 10 Day Notice was actually served in accordance with the *Act*.

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 10 Day Notice of March 03, 2018 is dismissed, without leave to reapply.

The 10 Day Notice of March 03, 2018, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application for a Monetary Order for unpaid rent and unpaid utilities 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: March 21, 2018

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Residential Tenancy Branch