



# Dispute Resolution Services

Page: 1

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

The landlords submitted a Proof of Service Notice of Direct Request Proceeding which declares that on September 21, 2019, the landlord A.M. served the tenant a Notice of Direct Request Proceeding by hand delivering a copy to the tenant's co-tenant (who is not named as a party to this application).

### Issues

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- (1) a copy of a residential tenancy agreement signed by the landlords and the tenant, including a co-tenant not named on this application, on April 3 and April 6, 2019,

indicating a monthly rent of \$1,550.00, due on the first day of the month for a tenancy commencing April 2, 2019;

- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 5, 2019, for \$925.00 in unpaid rent. The 10 Day Notice provides that the tenant (S.B., but not K.C.) had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on a stated effective vacancy date of September 15, 2019;
- (3) a copy of a witnessed Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was attached to the door of the rental unit on September 5, 2019 at 5:00 PM; and
- (4) a Direct Request Worksheet showing the rent owing in the amount of \$925.00.

### Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

I note at the outset that the written tenancy agreement names two parties as tenants, S.B. (the party named on this application) and K.C. (the co-tenant not named on this application). However, the landlords have only filed an application for dispute resolution against one, but not both, of the tenants named in the tenancy agreement.

Under the common law, specifically contract law, and which is consistent with *Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants*, co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

In other words, should I grant an order of possession to the landlords, the tenancy will thus end for both tenants named on the tenancy agreement. A landlord cannot unilaterally end a tenancy for one co-tenant whilst the other co-tenant’s tenancy continues. A tenancy ended for one co-tenant ends for all co-tenants.

Further, co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants; however, all tenants under a co-tenancy arrangement are the subject of a claim for compensation. *The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.* This last point is emphasized by the fact that there is no distinction within the tenancy agreement as to which co-tenant is responsible for what portion of the rent.

Given that *both* tenants were not named in this application, that *both* tenants were not named in, or properly served with, the 10 Day Notice (as is required by sections 46(2), 52, and 88 of the *Act*), and given that *both* tenants were not separately and individually served with the Notice of Direct Request Proceeding as is required by section 59(3) of the *Act*, I find that the landlords have not complied with the *Act* in respect of either correctly naming the parties subject to an application for an order of possession, for a monetary order, and for the proper method of service.

As such, I dismiss the landlords' application in its entirety with leave to reapply.

### Conclusion

I hereby dismiss the landlords' application 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 *Act*.

Dated: October 4, 2019

---

Residential Tenancy Branch