



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

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 24, 2019, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of two envelopes containing the Canada Post Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on October 29, 2019, the fifth day after their registered mailing.

### Issue(s) to be Decided

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenants on April 25, 2019, indicating a monthly rent of \$1,500.00, due on the last day of each month for a tenancy commencing on April 1, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice #1) dated June 3, 2019, for \$1,550.00 in unpaid rent that was due on June 1, 2019. 10 Day Notice #1 provides that Tenant D.G. 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 June 14, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that 10 Day Notice #1 was placed in the tenants' mailbox or mail slot at 6:30 pm on June 3, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice #2) dated July 15, 2019, for \$1,500.00 in unpaid rent that was due on June 30, 2019. 10 Day Notice #2 provides that Tenant D.G. 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 July 25, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice #3) dated August 7, 2019, for \$1,500.00 in unpaid rent that was due on July 31, 2019. 10 Day Notice #3 provides that Tenant D.G. 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 August 11, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice #4) for \$6,000.00 in unpaid rent that was due on October 1, 2019. 10 Day Notice #4 provides that Tenant D.G. 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 16, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant D.G. and indicates that 10 Day Notice #4 was personally served to the tenants at 10:30 am on October 4, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 landlords must prove that they issued a 10 Day Notice that complies with the provisions in section 52 of the *Act*.

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...*

The landlords must also prove they served the tenants the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act* and policy Guideline # 39.

Finally, the landlords must establish that, after having received the 10 Day Notice, the tenants did not pay the rent within the five days provided under section 46(4) of the *Act*.

#### 10 Day Notice #1

I note that 10 Day Notice #1 lists rent owing for the month of June 2019. However, I find that the Direct Request Worksheet submitted by the landlords does not indicate whether the rent for June 2019 was paid, and if so, whether the payment was received before or after the five days granted under section 46(4) of the *Act* had expired.

I find I am not able to determine the validity of 10 Day Notice #1 and for this reason, the landlords' application to end the tenancy and obtain an Order of Possession based on 10 Day Notice #1 is dismissed with leave to reapply.

#### 10 Day Notice #2

I find that 10 Day Notice #2 is not signed by the landlords. I further find that this omission invalidates 10 Day Notice #2 as the landlords have not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of 10 Day Notice #2, without leave to reapply.

10 Day Notice #2 is cancelled and of no force or effect.

### 10 Day Notice #3

I find that the landlords have not provided a copy of a Proof of Service Notice to End Tenancy form or any other documentation to establish service of 10 Day Notice #3 to the tenants. I find I am not able to confirm service of 10 Day Notice #3 to the tenants, which is a requirement of the Direct Request Proceeding.

For this reason, the landlords' application to end this tenancy and obtain an Order of Possession based on 10 Day Notice #3 is dismissed with leave to reapply.

### 10 Day Notice #4

I find that 10 Day Notice #4 is not signed or dated by the landlords. I further find that this omission invalidates 10 Day Notice #4 as the landlords have not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of 10 Day Notice #4, without leave to reapply.

10 Day Notice #4 is cancelled and of no force or effect.

### Monetary Order for unpaid rent

In a Direct Request Proceeding, the landlords can only pursue rent owed for an amount that remains unpaid after the tenants were served a valid 10 Day Notice in accordance with section 88 of the *Act*.

For this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the filing fee paid for this application.

### Conclusion

I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on 10 Day Notice #1, dated June 3, 2019, with leave to reapply.

I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on 10 Day Notice #2, dated July 15, 2019, without leave to reapply.

10 Day Notice #2, dated July 15, 2019, is cancelled and of no force or effect.

I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on 10 Day Notice #3, dated August 7, 2019, with leave to reapply.

I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on 10 Day Notice #4, served on October 4, 2019, without leave to reapply.

10 Day Notice #4, served on October 4, 2019, is cancelled and of no force or effect.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application 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: November 06, 2019

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Residential Tenancy Branch