



# 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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 27, 2020, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 27, 2020.

### 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 18, 2019, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on October 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February 10 Day Notice) dated February 1, 2020, for \$2,000.00 in unpaid rent. The February 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 February 11, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 5, 2020, for \$3,000.00 in unpaid rent. The March 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;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the March 10 Day Notice was personally served to the tenant at 5:35 pm on March 5, 2020; 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.

### February 10 Day Notice

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s);  
or
- a witness statement that they saw the landlord deliver the document(s).

I find that the landlord has not submitted any evidence or documentation to establish service of the February 10 Day Notice to the tenant.

As I am not able to confirm service of the February 10 Day Notice to the tenant, the landlord's application for an Order of Possession on the basis of the 10 Day Notice dated February 1, 2020 is dismissed with leave to reapply.

### March 10 Day Notice

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

- 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 there is no effective date (the day when the tenant must move out of or vacate the site) on the March 10 Day Notice. I find that this omission invalidates the March 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*. It is possible to amend an incorrect date on the 10 Day Notice, but the *Act* does not allow an adjudicator to input a date where none is written.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated March 5, 2020, without leave to reapply.

The 10 Day Notice dated March 5, 2020, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notices, the landlord's application for a Monetary Order for unpaid rent 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 10 Day Notice dated February 1, 2020, is dismissed, with leave to reapply.

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated March 5, 2020, is dismissed, without leave to reapply.

The 10 Day Notice dated March 5, 2020, is cancelled and of no force or effect.

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

I dismiss the landlord's 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: April 01, 2020

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Residential Tenancy Branch