



# 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 a copy of an e-mail containing attachments of the supporting documents to confirm the landlords served the Notice of Direct Request Proceeding to the tenant by e-mail on April 4, 2020.

### 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*?

### 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 material does not lend itself to ambiguity or give rise to issues that may need 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 they served the tenant with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. Policy Guideline #39 on Direct Requests provides the following requirements:

*“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy*

*Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”*

I note that the landlords submitted a copy of an e-mail sent to the tenant on April 4, 2020. However, the landlords have not provided a copy of the Proof of Service of the Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #39.

Furthermore, the Residential Tenancy Branch’s Director’s Order on e-mail service dated March 30, 2020 provides that a document required to be served in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received if:

- The person acknowledges having received the e-mail;
- The person replies to the e-mail; or
- The sender and recipient e-mail addresses have been routinely used for tenancy matters.

I find that the landlords have not submitted a copy of an e-mail reply from the tenant, an acknowledgement from the tenant, or any evidence demonstrating that e-mail was regularly used for communication regarding tenancy issues.

For these reasons, the landlords’ application for an Order of Possession and 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 \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlords’ application for an Order of Possession and 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: April 09, 2020

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Residential Tenancy Branch