



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, 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 applicants for an Order of Possession based on unpaid rent and a Monetary Order.

The applicants submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that the applicants sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The applicants provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing took place on October 29, 2020. Based on the written submissions of the applicant and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 3, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

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

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

Are the applicants 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 applicants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not one of the applicants and was signed by the tenant on July 6, 2020, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on July 7, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 7, 2020, for \$1,400.00 in unpaid rent. 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 October 20, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:30 am on October 7, 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 applicant 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 applicant 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.

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement and the 10 Day Notice does not match either of the applicants named on the Application for Dispute Resolution.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the applicants' request for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the applicants were not successful in this application, I find that the applicants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the applicants' request for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the applicants' request 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 18, 2020

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Residential Tenancy Branch