



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes OPR-DR-PP, 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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted signed Proof of Service - Notice of Direct Request Proceeding documents which declare that the Landlord served each of the Tenants with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 25, 2021. Images of envelopes addressed to each of the Tenants and bearing registered mail labels which included the tracking numbers were submitted in support. Based on the written submissions and evidence of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find the Tenants are deemed to have received these documents on January 30, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 Tenants on September 24, 2019, indicating a monthly rent in the amount of \$1,350.00 due on the first day of each month, for a tenancy commencing on October 1, 2019; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 7, 2021 for \$5,100.00 in unpaid rent (the “10 Day Notice”).

### 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.

Section 52 of the *Act* confirms that a notice to end tenancy given by a landlord must be in the approved form. The language in the *Act* is mandatory. In this case, the 10 Day Notice submitted by the Landlord is a 2-page document that is no longer in use. It is not in the approved form. The current 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is a 3-page document and is available on the Residential Tenancy Branch website.

Considering the above, I find that the 10 Day Notice submitted into evidence by the Landlord is cancelled and of no force or effect. It is ineffective to end the tenancy. As a result, I find that the Landlord’s request for an order of possession for unpaid rent based on the undisputed 10 Day Notice is dismissed without leave to reapply.

With respect to the Landlord's request for a monetary order for unpaid rent, I find that this relief flows from the issuance of a valid 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. As I have found the 10 Day Notice to be cancelled and of no force or effect, I find that the Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

As the Landlord has not been successful, I find that the Landlord is not entitled to recover the \$100.00 filing fee. This aspect of the application is dismissed without leave to reapply.

### Conclusion

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

The Landlord's request for an order of possession for unpaid rent based on the 10 Day Notice is dismissed without leave to reapply.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord's request to recover the \$100.00 filing fee is dismissed 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: February 16, 2021

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Residential Tenancy Branch