



# Dispute Resolution Services

Page: 1

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

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 11, 2021, the landlords personally served Tenant N.U. the Notice of Direct Request Proceeding. The landlords had Tenant N.U. sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that Tenant N.U. has been duly served with the Direct Request Proceeding documents on March 11, 2021.

The landlords also submitted a copy of an envelope and a Canada Post receipt containing a tracking number to confirm a package was sent to Tenant M.D. by registered mail on March 13, 2021.

### 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

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 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 August 10, 2016, indicating a monthly rent of \$1,300.00, due on the sixteenth day of each month for a tenancy commencing on August 15, 2016
- A copy of a two-page 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 6, 2021, for \$8,195.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 16, 2021
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant N.U. and indicates that the 10 Day Notice was personally served to the tenants at 8:00 pm on February 16, 2021
- A Direct Request Worksheet and ledger 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.

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...*

I have reviewed all documentary evidence and I find that the landlords submitted an outdated version of the 10 Day Notice form. The current form, available from the Residential Tenancy Branch website, consists of three pages.

I also find that the 10 Day Notice is not signed by the landlords and does not include the address from where the tenants must move or vacate.

For these reasons, I find the outdated form is invalidated 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 based on the 10 Day Notice dated February 16, 2021, without leave to reapply.

The 10 Day Notice dated February 16, 2021 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice 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 \$100.00 filing fee paid for this application.

#### Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice dated February 16, 2021, is dismissed without leave to reapply.

The 10 Day Notice dated February 16, 2021 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: March 26, 2021

---

Residential Tenancy Branch