



# 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 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 a Notice of Dispute Resolution Hearing and supporting documents by registered mail on March 13, 2021. Service in this manner was supported by Canada Post receipts which included the tracking number. Pursuant to sections 89 and 90 of the *Act*, I find these documents are deemed to have been received by each of the Tenants on March 18, 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 signed by the parties on August 20, 2020, indicating a monthly rent in the amount of \$1,850.00 due on the first day of each month, for a tenancy commencing on September 15, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 4, 2021;
- A copy of a signed Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenants by attaching a copy to the Tenants' door on February 4, 2021; and
- A copy of a 1-page type-written document summarizing financial arrangements between the parties.

### 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.

In this case, the 10 Day Notice submitted by the Landlord indicates several different amounts due for unpaid rent and for payment of a "full damage deposit". The relevant portion of the 10 Day Notice is excerpted as follows:

The image shows a portion of a '10 Day Notice to End Tenancy' form. The header reads 'I am ending your tenancy because:'. There are two checked boxes with handwritten notes:

- ☒ You have failed to pay rent in the amount of \$1850.00. A handwritten note next to it says '\$925.00 owing' and 'due on: (DD/MM/YYYY) 01-Feb-2021'.
- ☒ You have failed to pay ~~utilities~~ full damage deposit in the amount of \$798.00. A handwritten note next to it says 'following written demand on: (DD/MM/YYYY)' and 'Due Dec 31, 2020'.

At the bottom, a handwritten note says '\$1723.00 total owing'.

I find that the amount being sought for unpaid rent or utilities is unclear. I also find that there is no basis for the Landlord's apparent request for payment of a security deposit through the Direct Request process.

Further, Policy Guideline #39 confirms that when making an application for dispute resolution through the direct request process, the landlord must provide copies of the Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing. The language in Policy Guideline #39 is mandatory. In this case, the Landlord did not submit a Direct Request Worksheet to support the calculation of the amount claimed in the application as required under Policy Guideline #39.

The evidence submitted gives rise to ambiguities and deficiencies that render me unable to determine the amount the Landlord is seeking for unpaid rent or utilities. I also find it is more likely than not that the Tenants would be unable to determine, based on the 10 Day Notice, the amount of rent or utilities due to enable them to pay any outstanding amount due in order to satisfy the 10 Day Notice.

Considering the above, I order that the 10 Day Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord's requests for an order of possession and a monetary order for unpaid rent based on the 10 Day Notice are dismissed without leave to reapply. The Landlord may choose to issue a new and valid Notice to End Tenancy for Unpaid Rent or Utilities and seek relief as appropriate.

As the Landlord has not been successful, the Landlord's request to recover the filing fee is dismissed without leave to reapply.

### Conclusion

I order that the 10 Day Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order that the Landlord's requests for an order of possession and a monetary order for unpaid rent based on the 10 Day Notice are dismissed without leave to reapply. The Landlord may issue a new and valid notice to end tenancy and seek relief as appropriate.

I order that the Landlord's request to recover the 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: April 9, 2021

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Residential Tenancy Branch