



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

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on May 28, 2021, the landlord personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on May 28, 2021.

### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on May 17, 2019, indicating a monthly rent of \$3,000.00, due on the first day of each month for a tenancy commencing on June 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 26, 2021, for \$24,300.00 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 May 17, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by e-mail and placed under the tenant's door at 9:11 am on April 27, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

The landlord has also indicated they sent the 10 Day Notice to the tenant by e-mail.

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide that documents "*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***"

I find there is no evidence to demonstrate that the tenant specifically provided their e-mail address for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation* and Policy Guideline #12.

I find the landlord has failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*.

For these reasons, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act* or section 43(2) of the *Regulation*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated April 26, 2021, without leave to reapply.

The 10 Day Notice dated April 26, 2021, is cancelled and of no force or effect.

For the same reason listed above, I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord must reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #39, if the landlord wants to apply through the Direct Request process.

### Conclusion

The landlord's application for an Order of Possession based on the 10 Day Notice dated April 26, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated April 26, 2021, is cancelled and of no force or effect.

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

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's 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: June 07, 2021

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Residential Tenancy Branch