



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-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 and a monetary order based on unpaid rent. The Landlord also applied to recover the filing fee.

The Landlord submitted a signed and witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on July 17, 2021, the Landlord served the Tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit.

Based on the written submissions and evidence of the Landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on July 17, 2021 and are deemed to have been received by the Tenant on July 20, 2021, the third day after they were posted to the door.

### **Issues 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**

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 Tenant on January 10, 2021, indicating a rent amount of \$1,050.00, for a tenancy commencing on January 15, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 24, 2021, for \$1,050.00 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 June 5, 2021;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the Tenant by leaving it on the kitchen counter of the rental unit at 7:00pm on May 29, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

### 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 on the kitchen counter of the rental unit which is not a method of service as indicated above.

For the above reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the Landlord’s application to end this tenancy and obtain an order of possession on the basis of the 10 Day Notice dated May 24, 2021, without leave to reapply.

The 10 Day Notice dated May 24, 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.

Conclusion

The Landlord's application for an order of possession on the basis of the 10 Day Notice dated May 24, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated May 24, 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: August 04, 2021

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Residential Tenancy Branch