



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devonshire Properties Inc. and [tenant name  
suppressed to protect privacy]

## **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 to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on August 17, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 9, 2021, the landlord sent Tenant M.A.A.U. the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 9, 2021 and are deemed to have been received by the tenant on September 14, 2021, the fifth day after their registered mailing.

The landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent to Tenant N.P.A.G. by registered mail. However, I find the landlord has not submitted a copy of the Proof of Service Notice of Direct Request Proceeding form for Tenant N.P.A.G.

### 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

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 April 9, 2020, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on May 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 13, 2021, for \$2,360.00 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 July 28, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:40 pm on July 13, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy
- A copy of a receipt dated July 19, 2021, for \$2,385.00 of rent, paid by the tenant, which the landlord has indicated is "for use and occupancy only"

### Analysis

Section 46(4)(a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect."

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on July 13, 2021 and is deemed to have been received by the tenant on July 16, 2021, three days after its posting.

I find that the fifth day for the tenant to have paid the rent was July 21, 2021<sup>10</sup>. I also find that the tenant paid the full \$2,360.00 listed as owing on the 10 Day Notice on July 19, 2021, within the five days provided under section 46(4) of the *Act*.

Therefore, I find the 10 Day Notice was cancelled pursuant to section 46(4)(a) of the *Act*.

For this reason, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated July 13, 2021, without leave to reapply.

The 10 Day Notice dated July 13, 2021 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a Monetary Order for unpaid rent is dismissed, 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 based on the 10 Day Notice dated July 13, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated July 13, 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: October 01, 2021

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Residential Tenancy Branch