



# 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 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 31, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 16, 2021, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlord provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

### 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 tenant on July 23, 2019, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on August 1, 2019
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 14, 2021, for \$4,500.00 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 August 24, 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 at 7:32 pm on August 14, 2021
- A copy of an e-mail sent from the landlord to the tenant on August 14, 2021 containing the 10 Day Notice as an attachment
- 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 they served the tenant with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* provides that a 10 Day Notice may be served “*by any other means of service provided for in the regulations.*”

Section 43(1) of the *Residential Tenancy Regulation* provides 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.***”

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

The landlord submitted a copy of a tenancy agreement containing an e-mail address for the tenant. However, I find there is indication that the tenant provided their e-mail address specifically for service of documents, as required by the *Residential Tenancy Regulation*.

I find the landlord has failed to demonstrate that e-mail service was in accordance with the *Act* and the *Regulation*. For this reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the *Act* or section 43(1) of the *Residential Tenancy 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 August 14, 2021, without leave to reapply.

The 10 Day Notice dated August 14, 2021, is cancelled and of no force or effect.

If the landlord wants to apply through the Direct Request process, the landlord may reissue the 10 Day Notice and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

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 based on the 10 Day Notice dated August 14, 2021, is dismissed, without leave to reapply.

The 10 Day Notice dated August 14, 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: November 19, 2021

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Residential Tenancy Branch