



# 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 December 7, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on December 18, 2021, the landlord sent the tenant 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 they served the tenant.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on December 18, 2021 and are deemed to have been received by the tenant on December 23, 2021, the fifth day after they were mailed.

### **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 landlord and the tenant on October 13, 2020, indicating a monthly rent of \$2,450.00, due on the first day of each month for a tenancy commencing on November 1, 2020;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 25, 2021, for \$1,450.00 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 November 25, 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 registered mail on November 15, 2021. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm they served the tenant; and;
- a copy of a spreadsheet titled direct request worksheet that shows partial rent payments in the amount of \$1000.00 received on November 1, 2021 and November 3, 2021 and the balance of November 2021 rent in the amount of \$450.00 paid on November 5, 2021; and;
- a copy of a Direct Request Worksheet RTB# 46 showing the rent owing for December 2021.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy **if rent is unpaid** on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

I have reviewed all documentary evidence and I find that the landlord indicates that the tenant had paid all of the rent owing for November 2021 prior to the issuance of the 10 Day Notice on November 15, 2021, which is not in accordance with section 46 of the *Act*.

I find there was no rent owing at the time the 10 Day Notice was issued, and that the landlord has not complied with the provisions of section 46 of the *Act*, regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated November 25, 2021, without leave to reapply.

The 10 Day Notice dated November 25, 2021, is cancelled and of no force or effect.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the 10 Day Notice was issued to the tenant. The 10 Day Notice was issued to the tenant on November 15, 2021. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord’s application for rent owed for December 2021.

The landlord’s application for a Monetary Order for unpaid rent owing for December 2021 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 November 25, 2021 is dismissed, without leave to reapply.

The 10 Day Notice dated November 25, 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 owing for December 2021 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: January 19, 2022

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Residential Tenancy Branch