



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION 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.

The landlord indicates that the tenant has vacated the rental unit and that they have nowhere to serve the Notice of Dispute Resolution Proceeding - Direct Request. The landlord submitted an unwitnessed Proof of Service Notice of Direct Request Proceeding form which indicates that the suite is vacant and they personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request on January 13, 2021.

### 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*?

## Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the landlord must prove they served the tenant with the Notice of Dispute Resolution Proceeding– Direct Request and all documents in support of the application in accordance with section 89 of the *Act*. Policy Guideline # 39 provides the key elements that need to be considered when making an application for Direct Request

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the tenant, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the landlord deliver the document(s).**

On the Proof of Service Notice of Direct Request Proceeding there is no signature of a witness, or a signature of the person who received the documents, to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant.

As I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant, which is a requirement of the Direct Request process, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

I further find the landlord has indicated that the tenant has vacated the rental unit.

I find the landlord has possession of the rental unit and for this reason, the landlord's application for an Order of Possession is dismissed without 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

I dismiss the landlord's application for an Order of Possession without leave to reapply.

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: January 28, 2022

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Residential Tenancy Branch