



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANAMEX HOLDINGS LTD  
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 April 20, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on April 30, 2022, the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request in person. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to the tenant on April 30, 2022.

### 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 September 21, 2019, indicating a monthly rent of \$1,050.00, due on the first day of each month for a tenancy commencing on October 1, 2019
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,050.00 to the monthly rent amount of \$1,066.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 1, 2022, for \$2,148.00 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 April 13, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 8:00 am on April 1, 2022
- A Direct Request Worksheet

### 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.

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 find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on April 1,

2022, the same day that the monthly rent was due for April 2022, which is not in accordance with section 46 of the *Act*.

For this reason, I find I cannot consider the portion of the landlord's application relating to rent owing for April 2022.

I note that the amount of the rent owing on the 10 Day Notice (\$2,148.00) does not match the amount of the monthly rent indicated in the Notice of Rent Increase (\$1,066.00).

The Direct Request Worksheet must clearly show any additional months for which the tenant still owes rent to substantiate the claim. However, I find the Direct Request Worksheet states that the full amount of \$2,148.00 is for the April 2022 rent.

I also find there is no indication on the Application for Dispute Resolution by Direct Request or any other document to explain the difference of \$1,082.00. I find I am not able to confirm whether the \$1,082.00 is for rent owing for previous months or for other charges such as late fees, repair costs, or by-law fines.

I find I am not able to determine whether the 10 Day Notice contains an amount of rent that was owing and late at the time the 10 Day Notice was issued.

For this reason, the landlord's application for an Order to Possession and 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

I dismiss the landlord's application for an Order of Possession and 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: May 31, 2022

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Residential Tenancy Branch