



# 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 landlords 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 landlords on April 20, 2022.

The landlords submitted a copy of a Proof of Service Notice of Direct Request Proceeding form signed by the tenant which declares that on April 29, 2022, the landlords personally served the tenant the Notice of Dispute Resolution Proceeding - Direct Request.

Based on the written submissions and evidence of the landlords and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were served to the tenant on April 29, 2022.

### **Issues to be Decided**

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by landlord K.T. and the tenant on February 4, 2022, indicating a monthly rent of \$475.00, due on the first day of each month for a tenancy commencing on February 1, 2022;
- a copy of an unsigned 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated April 9, 2022, for \$475.00 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 20, 2022;
- a copy of a Proof of Service Notice to End Tenancy form not signed by the tenant or a witness which indicates that the 10 Day Notice was personally served to the tenant at 10:40pm on April 9, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

### Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlords 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 landlords 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 landlords must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of

the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy 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 second page of the Proof of Service Notice to End Tenancy form there is no signature of a witness, or a signature of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice to the tenant.

I find I am not able to confirm service of the 10 Day Notice to the tenant, however I find a more impactful issue with the 10 Day Notice.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*  
*(a) be signed and dated by the landlord or tenant giving the notice,*  
*(b) give the address of the rental unit,*  
*(c) state the effective date of the notice...and*  
*(e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the 10 Day Notice is not signed by the landlords. I further find that this omission invalidates the 10 Day Notice as the landlords have not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated April 9, 2022, without leave to reapply.

The 10 Day Notice dated April 9, 2022 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlords' application for an Order of Possession based on the 10 Day Notice dated April 9, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated April 9, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the landlords' 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 27, 2022

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Residential Tenancy Branch