



# 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.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on June 1, 2022, the landlord sent 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 May 28, 2020, indicating a monthly rent of \$1,400.00, due on the twenty-eighth day of each month for a tenancy commencing on June 1, 2020
- A copy of a strata acknowledgement form listing the tenant's e-mail address and phone number as contact information
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 29, 2022, for \$1,400.00 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 May 9, 2022
- 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 1:54 pm on April 29, 2022
- A copy of a text conversation exchanged between the landlord and the tenant
- 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 Notice of Dispute Resolution Proceeding – Direct Request and all documents in support of the application in accordance with section 89 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*”

Section 43(2) 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 sent the Notice of Dispute Resolution Proceeding - Direct Request to the tenant's e-mail. The landlord provided a copy of a strata acknowledgement form listing an e-mail address for the tenant's contact information. However, I find this document does not specify that the tenant agreed to receive documents from the landlord by e-mail.

I find there is no evidence to demonstrate that the tenant's e-mail address was provided specifically for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant in accordance with the *Act* and *Regulation*. However, I find there is a more impactful issue with the landlord's application.

The landlord must also prove they served the tenant with the 10 Day Notice as per section 88 of the *Act* or section 43(1) of the *Residential Tenancy Regulation*.

The landlord has indicated they served the 10 Day Notice to the tenant by e-mail. However, as with the Notice of Dispute Resolution Proceeding – Direct Request, there is no evidence to demonstrate that the tenant provided their e-mail address for service of documents.

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*.

The landlord submitted a copy of a text conversation as evidence showing the tenant's acknowledgement of having received the 10 Day Notice. However, I find the text message from the landlord states they are going to serve a "*5 day notice to pay or end the tenancy to move in 10 days*." I find the tenant's reply does not confirm they received a 10 Day Notice dated April 29, 2022. The tenant's text messages are simply asking the landlord why they will serve a 5 Day Notice instead of a 10 Day Notice and discussing financial hardship.

I find the landlord has failed to demonstrate that the tenant received the 10 Day Notice, despite it not being served in accordance with the legislation.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated April 29, 2022, without leave to reapply.

The 10 Day Notice dated April 29, 2022, is cancelled and of no force or effect.

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 April 29, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated April 29, 2022, 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: June 21, 2022

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Residential Tenancy Branch