



# 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 copy of a Proof of Service Notice to End Tenancy form which indicates that on July 7, 2022, the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail to the rental unit. The landlord submitted a copy of a Canada Post Customer Receipt containing the tracking number to confirm this service. The landlord has not submitted a copy of the Proof of Service of the Notice of Direct Request Proceeding form to establish service of the Notice of Direct Request Proceeding documents to the tenant.

### **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 on Direct Requests provides the following requirements:

*“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”*

I find that the landlord has not provided a copy of a Proof of Service Notice of Direct Request Proceeding form to establish service of the Direct Request Proceeding documents to the tenant. In its place, I find that the landlord submitted a copy of a Proof of Service Notice to End Tenancy form discussing service of a 10 Day Notice to the tenant.

The landlord states that they couldn't find the Proof of Service Notice of Direct Request Proceeding form on the Residential Tenancy Branch website. However, the form was provided to the landlord in the Notice package email sent to the landlord by the Residential Tenancy Branch.

I also find that the street number of the tenant's address listed on the Canada Post Customer Receipt does not match the tenant's address listed on the tenancy agreement.

I find that 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. For this reason, the landlord's application for an Order of 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: July 25, 2022

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Residential Tenancy Branch