



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUMMERFIELD RENTALS 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 May 13, 2022.

The landlord submitted a copy of a Proof of Service Notice to End Tenancy form which indicates that the landlord posted a 10 Day Notice to the door of the rental unit. The landlord has not submitted a copy of the Proof of Service of the Notice of Direct Request Proceeding 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*?

## Background and Evidence

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 July 17, 2021 indicating a monthly rent of \$1,595.00, due on the first day of each month for a tenancy commencing on August 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 8, 2022, for \$4,377.00 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 March 18, 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 on March 8, 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 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.

I find that I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the tenant, however I find a more impactful issue with the landlord's application.

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 landlord. I further find that there is no address, from where the tenant must move out or vacate, on the 10 Day Notice. I find that these omissions invalidate the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the *Act*.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of March 8, 2022, without leave to reapply.

The 10 Day Notice of March 8, 2022 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord's application for 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

The landlord's application for an Order of Possession based on the 10 Day Notice of March 8, 2022, is dismissed without leave to reapply.

The 10 Day Notice of March 8, 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: August 02, 2022

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Residential Tenancy Branch