



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR-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, 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 July 18, 2022.

The landlord submitted a copy of a witnessed Proof of Service Notice of Direct Request Proceeding form which declares that on August 4, 2022, the landlord served the tenant the Notice of Dispute Resolution Proceeding - Direct Request by posting it to the door of the rental unit.

Based on the written submissions and evidence of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on August 4, 2022 and are deemed to have been received by the tenant on August 7, 2022, the third day after they were posted to the door of the rental unit.

### **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 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 tenant on February 2, 2022, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on February 2, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated July 6, 2022, for \$2,300.00 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 July 16, 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 2:30pm on July 6, 2022;
- a copy of a tenant statement of account dated July 18, 2022 showing July 2022 rent payment was received in full on July 13, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

## Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on July 6, 2022 and is deemed to have been received by the tenant on July 9, 2022, three days after it was posted to the door of the rental unit.

Section 46 (4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice. Section 46(4)(a) of the *Act* states that if the tenant pays the overdue rent within five days of receiving the 10 Day Notice, the Notice has no effect.

I find that the tenant paid the overdue rent on July 13, 2022, which was within five days of receiving the 10 Day Notice, and as such, the 10 Day Notice has no effect.

Therefore, the landlord’s application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated July 6, 2022 is dismissed, without 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 based on the 10 Day Notice dated July 6, 2022, without 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: September 02, 2022

---

Residential Tenancy Branch