



# 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 August 23, 2022.

The landlords submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on August 25, 2022, the landlords served each tenant the Notice of Dispute Resolution Proceeding - Direct Request by handing both sets of documents to Tenant C.B. The landlords had Tenant C.B. sign the Proof of Service Notice of Direct Request Proceeding forms to confirm this service.

Based on the written submissions of the landlords and in accordance with section 89(1) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant C.B. on August 25, 2022. In accordance with section 89(2) of the *Act*, I find that the Direct Request Proceeding documents were duly served to Tenant S.A. on August 25, 2022.

### Issue(s) 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 the landlords on June 17, 2021 and the tenants on June 18, 2021, indicating a monthly rent of \$2,950.00, due on the first day of each month for a tenancy commencing on July 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the July 10 Day Notice) dated July 4, 2022, for \$5,426.00 in unpaid rent. The July 10 Day Notice provides that the tenants 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 17, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the August 10 Day Notice) dated August 14, 2022, for \$3,771.20 in unpaid rent. The August 10 Day Notice provides that the tenants 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 August 27, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the July 10 Day Notice was sent to the tenants by e-mail at 8:57 am on July 4, 2022
- A copy of an e-mail sent from the landlords to the tenants on July 4, 2022, containing an attachment entitled "rtb30-Monaco.pdf"
- A copy of two e-mails received from the tenants containing the signed tenancy agreement and the signed form K
- A copy of a photograph showing a 10 Day Notice attached to a door
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### 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 tenants 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)
- a witness statement that they saw the landlord deliver the document(s)
- a copy of the outgoing e-mail showing the attachments included

The landlord submitted a Proof of Service Notice to End Tenancy form indicating that the July 10 Day Notice was sent to the tenants by e-mail. The landlords submitted a copy of an outgoing e-mail containing an attachment entitled "rtb30-Monaco.pdf."

However, I find that the file uploaded to the Residential Tenancy Branch online system named "rtb30-Monaco.pdf" contains the August 10 Day Notice. The July 10 Day Notice file is entitled "RTB30-Curtis.pdf."

I find I am not able to confirm whether the landlords e-mailed the tenants the July 10 Day Notice or the August 10 Day Notice. For this reason, I find I am not able to confirm service of a 10 Day Notice by e-mail.

I also note that the landlords submitted a copy of a photograph showing a 10 Day Notice attached to a door. However, I find the resolution of this photograph is such that the contents of the document are illegible. I find I am not able to determine whether the document attached to the door is the July 10 Day Notice or the August 10 Day Notice.

Furthermore, I find the landlords have not submitted a copy of a Proof of Service Notice to End Tenancy form or any other document containing the signature of a witness to confirm service of a 10 Day Notice by attaching to the door.

For these reasons, I find I am not able to confirm service of a 10 Day Notice to the tenants by attaching to the door.

I find I am not able to confirm service of either 10 Day Notice to the tenants, which is a requirement of the Direct Request Proceeding.

For this reason, the landlords' application for an Order of Possession and 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

I dismiss the landlords' application for an Order of Possession and 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: September 22, 2022

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Residential Tenancy Branch