



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 19, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on August 5, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post receipt and tracking number to confirm the documents were delivered to the tenant on August 9, 2022.

Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were served on August 5, 2022 and were received by the tenant on August 9, 2022.

### 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 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 names a landlord who is not the applicant and was signed by the tenant on January 11, 2016, indicating a monthly rent of \$2,100.00, due on the last day of each month for a tenancy commencing on January 16, 2016
- A copy of a Notice of Rent Increase forms showing the rent being increased from \$2,100.00 to the monthly rent amount of \$2,131.00
- A copy of a residential property management agreement showing the authorization of management responsibilities from the owner, who is applying for dispute resolution, to the landlord named on the tenancy agreement
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 7, 2022, for \$2,224.95 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 22, 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 registered mail on July 6, 2022
- A copy of a Canada Post receipt and tracking report containing the tracking number to confirm the 10 Day Notice was sent to the tenant on July 6, 2022
- A blank Direct Request Worksheet
- A copy of an Interac e-transfer showing a payment in the amount of \$2,224.95 was received on July 18, 2022

### 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.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement
- Documents showing changes to the tenancy agreement or tenancy
- **The Direct Request Worksheet** (form RTB-46) setting out the amount of rent or utilities owing
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities.

I find that the landlord has submitted a blank copy of the Direct Request Worksheet, which should clearly detail the rent owing and paid. I find I am not able to confirm whether the amount listed on the 10 Day Notice was valid rent that was unpaid and owing at the time the notice was issued.

I further find that I am not able to consider the landlord's Application for Dispute Resolution without the completed Direct Request Worksheet, which is a requirement of the Direct Request process.

For this reason, the landlord's application for an Order of Possession for unpaid rent is dismissed with leave to reapply.

As the landlord was not successful in this application, I find 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 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: September 02, 2022

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Residential Tenancy Branch