



# 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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on September 16, 2022.

The landlord submitted a copy of two Proof of Service Notice of Direct Request Proceeding forms which declare that on September 16, 2022, the landlord e-mailed each tenant the Notice of Dispute Resolution Proceeding - Direct Request to pre-agreed upon e-mail addresses for service of documents. The landlord provided a copy of two RTB# 51 Address for Service forms which show the pre-agreed upon e-mail addresses for the tenants for service of documents.

### **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 tenants on December 1, 2021, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on December 1, 2021;
- a copy of an unsigned 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 1, 2022, for \$600.00 in unpaid rent. The 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 12, 2022;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by text message at 2:10pm on August 1, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

## Analysis

In this type of matter, the landlord must prove they served each 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 provides that service by e-mail may be proven by providing:

- **A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email** and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The landlord has indicated that they sent the Notices of Dispute Resolution Proceeding - Direct Request to the tenants by e-mail. However, I find the landlord has not submitted a copy of the outgoing e-mails containing the Direct Request documents as attachments to confirm this service.

I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding - Direct Request to the tenants, however I find more impactful issues with the 10 Day Notice.

In this type of matter, the landlord must prove they served the tenants with the 10 Day Notice as per section 88 of the *Act*. Section 88 of the *Act* allows for service by sending the 10 Day Notice to the tenants by mail, by leaving a copy with the tenants, by leaving a copy in the tenants' mailbox or mail slot, by attaching a copy to the tenants' door, by leaving a copy with an adult who apparently resides with the tenants, or by any other means of service provided for in the regulations.

The landlord has indicated that they served the tenants the 10 Day Notice by text message, which is not an allowed method of service under the *Act* or *Regulation*. I find the landlord has not served the 10 Day Notice to the tenants in accordance with the *Act* or *Regulation*.

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 this omission invalidates 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 dated August 1, 2022, without leave to reapply.

The 10 Day Notice dated August 1, 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 dated August 1, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated August 1, 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: October 17, 2022

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Residential Tenancy Branch