

## **DECISION**

### **Introduction**

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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 the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$2,060.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. Based on the written submissions of the landlord:

- I find that Tenant K.L. was served on September 29, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 4, 2022, the fifth day after the registered mailing.

### **Issue(s) to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent? (\$2,060.00)

Is the landlord entitled to recover the filing fee for this application from the tenant? (\$100.00)

## Background and Evidence

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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 evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 10, 2022, indicating a current monthly rent of \$1,960.00, due on the first day of the month for a tenancy commencing on July 1, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 9, 2022, for \$1,960.00 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 August 19, 2022;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 2:45 pm on August 9, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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### **Is the landlord entitled to an Order of Possession based on unpaid rent?**

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 that they served the tenant 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); or
- **a witness statement that they saw the landlord deliver the document(s).**

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant.

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

For this reason, the landlord's application for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act, is dismissed, with leave to reapply. I make no findings on the merits of the matter.

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

In a Direct Request Proceeding, the landlord is only entitled to financial compensation directly related to a valid 10 Day Notice and a successful Order of Possession request. I note the purpose of a Direct Request is primarily to obtain an Order of Possession and not to obtain a faster resolution to purely monetary claim.

As the landlord was not successful in obtaining an Order of Possession for unpaid rent, I find I cannot award compensation for unpaid rent.

For this reason, the landlord's application for a Monetary Order for unpaid rent pursuant to section 67 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter.

### **Is the landlord entitled to recover the filing fee for this application from the tenant?**

As the landlord was not successful in this application, the landlord's application for authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act is dismissed, without leave to reapply.

## **Conclusion**

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The landlord's Application for an Order of Possession based on unpaid rent is dismissed, with leave to reapply.

The landlord's Application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

The landlord's Application for authorization to recover the filing fee for this application from the tenant is dismissed, 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: November 1, 2022

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Residential Tenancy Branch