



# 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**

On July 14, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that the 10 Day Notice was slid "through the door gap." In a Direct Request Proceeding, I find I am not able to determine whether the 10 Day Notice was wedged into the side of the door frame, remaining securely on the outside of the door, or if it was placed under the door and into the rental unit which is not a method of service permitted by section 88 of the Act. I find I am not able to confirm service of the 10 Day Notice to the tenant and that a participatory hearing is necessary to address this issue.*

I have been delegated authority under the *Act* to consider the landlord's application for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- Authorization to recover the filing fee from the other party pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:35 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was represented by an agent, JH (the “landlord”). The landlord testified that he served the Notice of Dispute Resolution Proceedings package upon the tenant by posting a copy to the door of the tenant’s residence on July 18, 2022. A photo of the documents taped to the door was provided as evidence by the landlord. The landlord also provided a copy of a text message from the tenant dated October 19, 2022 where the tenant advises paying (the rent) is on top of his list **and so is the court date next month**. I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings package on July 21, 2022, three days after it was posted to his door in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the tenant in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent?  
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on March 10, 2022 with rent set at \$2,400.00 per month payable on the first day of each month. The tenant was supposed to pay a security deposit of \$1,200.00 but never did so.

The landlord testified that the tenant was to pay rent in the amount of \$1,600.00 for the period from March 10<sup>th</sup> to March 30<sup>th</sup>. He never did. Nor did the tenant pay rent in the amount of \$2,400.00 for the month of April or for any month thereafter.

The landlord acknowledges he did not properly serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 3<sup>rd</sup> because he slipped it under the tenant’s door. Consequently, the landlord’s agent testified he personally served a second 10 Day Notice to End Tenancy for Unpaid Rent/Utilities dated April 8, 2022 upon the tenant on April 8<sup>th</sup>. No copy of the second notice to end tenancy was provided as evidence, however the landlord’s agent testified that the form:

- is signed and dated by the landlord;
- gives the address of the rental unit;
- states an effective date of April 18, 2022;
- states the grounds for ending the tenancy is for unpaid rent in the amount of \$4,000.00;

- was done in the approved form;

The landlord's agent gave affirmed testimony that he personally served the tenant with this second notice to end tenancy on April 8, 2022. The tenant has not paid the \$4,000.00 shown as outstanding or filed an application to dispute the notice.

### Analysis

A copy of the notice to end tenancy dated April 8, 2022 was not provided in evidence by the landlord for this hearing. However, based on the undisputed testimony of the landlord, I find the notice to end tenancy meets the form and content requirements as set out in section 52 of the Act, in that the form:

- (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,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Pursuant to section 55(2)(b) of the Act, a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Based on the undisputed testimony of the landlord, I am satisfied the tenant was personally served with the April 8, 2022 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 8, 2022 pursuant to sections 89 and 90 of the Act. The tenant did not file an application to dispute the notice to end tenancy by April 13, 2022, within the 5 days required under section 46 or pay the outstanding amount. Pursuant to section 55(4), the landlord is granted an Order of Possession. As the effective date has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

I accept the landlord's undisputed testimony that the tenant never paid any rent from the date the tenancy began, on March 10, 2022. Pursuant to section 55(4), the landlord is granted a monetary order in the amount of \$1,600.00 for the 20 days from March 10 to March 30 and 8 months at \$2,400.00 per month for the months of April to November, 2022. [ $\$1,600.00 + (\$2,400.00 \times 8 = \$19,200.00) = \mathbf{\$20,800.00}$ ].

As the landlord's application was successful, the landlord may also recover the \$100.00 filing fee.

Conclusion

I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

I grant the landlord a monetary order in the amount of **\$20,900.00**.

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 21, 2022

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Residential Tenancy Branch