

## **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 (\$1,450.00)

### **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, on October 22, 2022, the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail. The landlord submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm this service.

### **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? (\$1,450.00)

### **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 August 26, 2021, indicating a monthly rent of \$1,450.00, due on the first day of the month for a tenancy commencing on September 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 27, 2022, for \$1,450.00 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;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:30 pm on September 27, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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In this type of matter, the landlord must prove they served the 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 which permits service “*by sending a copy by registered mail...*”

The definition of registered mail is set out in section 1 of the Act as “*any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.*” Policy Guideline #12 on Service Provisions goes on to clarify that this “*includes Express post, if the signature option is used.*”

I find that the tracking number provided by the landlord with the Proof of Service Notice of Direct Request Proceeding is for a package sent by Canada Post's Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post's Online Tracking System shows that a signature was not required for the delivery of this Express post mailing and, as such, it does not meet the definition of registered mail as defined under the Act.

I find that the landlord has not served the tenant with notice of this application in accordance with section 89 of the Act. However, I find there is a more impactful issue with the landlord's application.

Section 52 of the Act provides the following requirements regarding the form and content of notices to end tenancy:

*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 find that there is no effective date (the day when the tenant must move out of or vacate the site) on the 10 Day Notice. I find that this omission invalidates the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the Act. It is possible to amend an incorrect date on the 10 Day Notice, but the Act does not allow an adjudicator to input a date where none is written.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 27, 2022, without leave to reapply.

The 10 Day Notice dated September 27, 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.

## **Conclusion**

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The landlord's application for an Order of Possession for unpaid rent, based on the 10 Day Notice dated September 27, 2022, is dismissed, without leave to reapply. This tenancy will continue until ended in accordance with the Act.

The landlord's application for a Monetary Order for unpaid rent is dismissed, with 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 29, 2022

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Residential Tenancy Branch