

## **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 an 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 (\$1,818.80)
- 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 applicant 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 had the tenant sign the Proof of Service Notice of Direct Request Proceeding form to confirm this service. Based on the written submissions of the landlord:

- I find that Tenant M.M. was duly served on September 29, 2022, in person.

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

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

Is the applicant entitled to a Monetary Order for unpaid rent? (\$1,818.80)

Is the applicant 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 applicant submitted the following 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 March 23, 2021, indicating a monthly rent of \$1,725.00, due on the first day of the month for a tenancy commencing on April 1, 2021;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,725.00 to the monthly rent amount of \$1,750.80;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 7, 2022, for \$1,818.80 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 September 21, 2022;
- 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 9:00 am on September 7, 2022; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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

In an *ex parte* Direct Request Proceeding, the onus is on the applicant 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 applicant 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.

I find that the landlord's name on the tenancy agreement (H.T.H.L.) does not match the landlord's name on the Application for Dispute Resolution (H.T.R.M.). There is also no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the applicant's request for an Order of Possession based on unpaid rent, pursuant to sections 46 and 55 of the Act, is dismissed, with leave to reapply.

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

In a Direct Request Proceeding, I have to be satisfied the orders are issued in the correct name. For the same reasons listed above, the applicant's request for a Monetary Order for unpaid rent, pursuant to section 67 of the Act, is dismissed, with leave to reapply.

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

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

**Conclusion**

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The applicant's request for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act is dismissed, with leave to reapply.

The applicant's request for a Monetary Order for unpaid rent pursuant to section 67 of the Act is dismissed, with leave to reapply.

The applicant's request 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.

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