

## **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 applicant'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 (\$8,190.00)
- 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 applicant submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on November 7, 2022 they sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) to a pre-agreed upon e-mail address for service of documents. The applicant provided a copy of an RTB#51 Address for Service form signed by the tenant and a copy of the sent e-mail with the Proceeding Package attached to confirm this service. In accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation* and based on the written submissions and evidence of the applicant:

- I find that on November 7, 2022 the applicant sent the Proceeding Package to tenant I.M.K. by pre-agreed e-mail, and it was deemed to have been received by the tenant on November 10, 2022, the third day after it was e-mailed.

### **Issues 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? (\$8,190.00)

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

## Background and Evidence

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The applicant submitted the following evidentiary material:

- a copy of a residential tenancy agreement which names a landlord who is not the applicant and signed by the tenant on September 3, 2021, indicating a monthly rent of \$2,680.00, due on the first day of the month for a tenancy commencing on October 1, 2021;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 3, 2022, for \$8,190.00 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 October 13, 2022;
- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the tenant by leaving a copy with an adult who apparently resides with the tenant at 5:10 pm on October 3, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

## Analysis

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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.

Policy Guideline #39 on Direct Requests provides the following information:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of:

- The written tenancy agreement
- Documents showing changes to the tenancy agreement or tenancy, such as rent increases, or **changes to parties or their agents**
- The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- Proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match the landlord's name on the Application for Dispute Resolution. 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 and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

## **Conclusion**

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The applicant'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.

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

The applicant'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.

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: December 13, 2022

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Residential Tenancy Branch