

## **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 (\$3,100.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

### **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? (\$3,100.00)

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

### **Analysis**

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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 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. Policy Guideline #39 on Direct Requests provides the following requirements:

*“After the Notice of Dispute Resolution Proceeding Package has been served to the tenant(s), the landlord must complete and submit to the Residential Tenancy Branch a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each tenant served.”*

I note that the landlord logged into the Residential Tenancy Branch dispute website and indicated they served the tenant the Notice of Dispute Resolution Proceeding – Direct Request in person.

However, I find the landlord has not provided a copy of the Proof of Service Notice of Direct Request Proceeding form, containing the signature of a witness, or of the person who received the documents, to confirm service of the Direct Request documents to the tenant.

I find the landlord has not submitted the documents required for a Direct Request, as established in Policy Guideline #39.

For this reason, the landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

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

## **Conclusion**

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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.

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

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.

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 14, 2022

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Residential Tenancy Branch