

## **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 landlords' 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 (\$3,200.00)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlords submitted a copy of a Proof of Service Notice of Direct Request Proceeding form which declares that on October 30, 2022, they personally served tenant R.J. the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package).

In accordance with section 89(1) of the Act and based on the written submissions and evidence of the landlords, I find that the Proceeding Package was served to tenant R.J. on October 30, 2022.

The landlords did not submit a copy of a Proof of Service Notice of Direct Request Proceeding form to indicate service to tenant B.R.

### **Issues to be decided**

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Are the landlords entitled to an Order of Possession based on unpaid rent?

Are the landlords entitled to a Monetary Order for unpaid rent? (\$3,200.00)

Are the landlords entitled to recover the filing fee for this application from the tenants? (\$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 landlords submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by landlord Harv.K., landlord Harj. K., and tenant R.J. on March 23, 2022, indicating a monthly rent of \$1,600.00, due on the first day of the month for a tenancy commencing on April 1, 2022;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 5, 2022, for \$3,200.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy;
- a copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to tenant R.J. at 7:42 pm on October 14, 2022; and;
- a copy of a Direct Request Worksheet showing the rent owing during the relevant period.

## Analysis

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In an *ex parte* Direct Request Proceeding, the onus is on the landlords 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 landlords 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 landlords must prove they served the tenants 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* and in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #12 on Service Provisions provides the following requirement:

*“Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately.”*

I find that the landlords did not submit a copy of a Proof of Service Notice of Direct Request Proceeding form to indicate service to tenant B.R., and it’s place I find that the

landlords submitted a second copy of the Proof of Service Notice of Direct Request Proceeding form discussing service of the Direct Request Proceeding documents to tenant R.J.

I find that I cannot confirm service of the Notice of Dispute Resolution Proceeding—Direct Request to tenant B.R. as required by sections 71 and 89 of the *Act* and for this reason, I will only proceed with the portion of the landlord's application naming tenant R.J. as a respondent.

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 have reviewed all documentary evidence and I find that there is no effective date (the day when the tenants 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 landlords have 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 landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated October 5, 2022, without leave to reapply.

The 10 Day Notice dated October 5, 2022, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

## Conclusion

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The landlords' application for an Order of Possession based on the 10 Day Notice dated October 5, 2022, is dismissed, without leave to reapply.

The 10 Day Notice dated October 5, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid rent, with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application 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 5, 2022

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Residential Tenancy Branch