



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPRM-DR, FFL**

### Introduction

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 by the Landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The Landlord submitted a Proof of Service of the Notice of Direct Request Proceeding (the Notice), which declares that on November 8, 2018, the Landlord hand-delivered a copy of the Notice and a copy of all supporting documents to the Tenant. The Proof of Service of the Notice is signed by a witness. I find that the Tenant was duly served with the Direct Request Proceeding documents on November 8, 2018, in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$700.00, due on the first day of each month for a tenancy commencing on October 1, 2015;

- A copy of a Notice of Rent Increase form dated April 1, 2017 indicating the rent being increase from \$700.00 to the amount of \$800.00 as of July 1, 2017;
- A copy of pages 1 and 2 of a four-page Notice to End Tenancy form dated September 8, 2018, for \$2,400.00 in unpaid rent with a stated effective vacancy date of September 18, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the Notice to End Tenancy was left with an adult who apparently resides with the tenant at 11:00 am on September 8, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 8, 2018, for \$1,600.00 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 November 18, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

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.

The Landlord provided a copy of a Notice to End Tenancy dated September 8, 2018, and a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was dated November 8, 2018.

In the first Notice to End Tenancy, the Landlord claimed that the Tenant owed him \$2,400.00; however, in the second 10 Day Notice, the Landlord said the Tenant owed him \$1,600.00 as of October 1, 2018.

In a Direct Request Worksheet he submitted, the Landlord said that \$2,400.00 was owed to him by the Tenant. Further, the Landlord indicated that the amount owed to him from the Tenant each month was \$800.00. However, in the tenancy agreement, which was unsigned, the rent agreed upon by the parties was \$700.00. The landlord submitted a Notice of Rent Increase; however I find that a rent increase of \$100.00 is beyond the

allowable amount for 2017. The Landlord did not explain how he calculated that the amount owed to him by the Tenant in rent each month was \$800.00, or what amount was owing as of November 2, 2018.

I find that I am not able to confirm the amount owing to the Landlord, based on the evidence he submitted. I also find that the tenancy agreement is not signed by the tenant or the landlord, which is a requirement of the Direct Request process.

For these reasons, the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply for a participatory hearing.

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

### Conclusion

I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply for a participatory hearing.

I dismiss the landlord's 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: November 14, 2018

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Residential Tenancy Branch