



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-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 landlords to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlords on June 20, 2022.

The landlords submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on June 21, 2022, the landlords sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The landlords provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The landlords also submitted a copy of an Address for Service form which was signed by the tenant on July 24, 2021, indicating the tenant agreed to receive documents by e-mail.

Based on the written submissions of the landlords and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on June 21, 2022 and are deemed to have been received by the tenant on June 24, 2022, the third day after their e-mailing.

### Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

## Background and Evidence

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on July 24, 2021, indicating a monthly rent of \$1,250.00, due on the first day of each month for a tenancy commencing on August 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 2, 2022, for \$1,319.80 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 June 11, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by e-mail at 7:43 pm on June 1, 2022
- A copy of the outgoing e-mail containing an attachment to confirm the 10 Day Notice was sent to the tenant on June 1, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

## Analysis

Section 46(1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlords have served the 10 Day Notice on June 1, 2022, the same day that the monthly rent was due for June 2022, which is not in accordance with section 46 of the *Act*.

I find that the landlords have not complied with the provisions of section 46 of the *Act*, regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated June 1, 2022, without leave to reapply.

The 10 Day Notice dated June 1, 2022, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlords' application for a Monetary Order for unpaid rent 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

The landlords' application for an Order of Possession based on the 10 Day Notice dated June 1, 2022 is dismissed, without leave to reapply.

The 10 Day Notice dated June 1, 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: July 13, 2022

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Residential Tenancy Branch