

## **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
- 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 landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The landlord had the tenant sign the Proof of Service Landlord's Notice of Direct Request Proceeding form to confirm this service.

Based on the written submissions of the landlord I find that Tenant M.H. was duly served the Proceeding Package on October 5, 2022, in person.

### **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 recover the filing fee for this application from the tenant? (\$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 landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$500.00, due on the first day of the month for a tenancy commencing on February 8, 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2022, for \$500.00 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;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served at 5:30 pm on September 2, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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### Is the landlord entitled to an Order of Possession based on unpaid rent?

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 tenant must move out of or vacate the site) on the 10 Day Notice. I also find that there is no address, from where the tenant must move or vacate, on the 10 Day Notice.

I find that these omissions invalidate the 10 Day Notice as the landlord has not complied with the provisions of section 52 of the Act.

Furthermore, I note that the landlord must prove that they served the tenant with the 10 Day Notice in accordance with section 88 of the Act.

Section 88 of the Act allows for service by either sending the 10 Day Notice to the tenant by mail, by leaving a copy with the tenant, by leaving a copy in the tenant's mailbox or mail slot, attaching a copy to the tenant's door or by leaving a copy with an adult who apparently resides with the tenant.

In the special details section of the Proof of Service Notice to End Tenancy, the landlord has indicated that they placed the 10 Day Notice under the door of the rental unit which is not a method of service as indicated above.

For this reason, I find that the 10 Day Notice has not been served in accordance with section 88 of the Act.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 2, 2022, without leave to reapply.

The 10 Day Notice dated September 2, 2022, is cancelled and of no force or effect.

**Is the landlord entitled to recover the filing fee for this application from the tenant?**

As the landlord was not successful in this application, the landlord's application for authorization to recover the filing fee for this application is dismissed, without leave to reapply.

**Conclusion**

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The landlord's application for an Order of Possession based on unpaid rent, based on the 10 Day Notice dated September 2, 2022, is dismissed, without leave to reapply. This tenancy will continue until ended in accordance with the Act.

The landlord's application for authorization to recover the filing fee for this application 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: November 8, 2022

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Residential Tenancy Branch