



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### 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 signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 25, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant will be deemed served with the Direct Request Proceeding documents on September 30, 2015, the fifth day after their registered mailing.

### 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant in March of 2014, indicating a monthly rent of \$650.00 due on the first day of the month for a tenancy commencing on March 15, 2014;
- A copy of a Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 01, 2015, and posted to the tenant's door on September 01, 2015, with a stated effective vacancy date of September 15, 2015, for \$650.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 7:00 (a.m. or p.m. not indicated) on September 01, 2015. The 10 Day Notice states 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.

### Analysis

Section 46 (1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after 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 landlord has issued the 10 Day Notice to the tenant on September 01, 2015, the day that rent was due. The *Act* states that the 10 Day Notice can only be issued to the tenant on any day **after** the rent is due.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of September 01, 2015, is dismissed without leave to reapply. The 10 Day Notice of September 01, 2015 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a monetary Order with leave to reapply.

### Conclusion

I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice of September 01, 2015, without leave to reapply. The 10 Day Notice of September 01, 2015 is cancelled and of no force or effect.

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

I dismiss the landlord's application for a monetary Order with 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: September 29, 2015

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Residential Tenancy Branch

