



# 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 January 5, 2017, 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 has been deemed served with the Direct Request Proceeding documents on January 10, 2017, 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 tenant;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 18, 2016, indicating a monthly rent of \$1,500.00, due on the first day of the month for a tenancy commencing on September 1, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 23, 2016, and placed in the tenant's mailbox or mail slot on December 23, 2016, with a stated effective vacancy date of January 3, 2017, for \$1,950.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was placed in the tenant's mailbox or mail slot at 5:30 pm on December 23, 2016. 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

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on December 26, 2016, three days after its posting.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent; or the Monetary Order Worksheet must clearly show any additional months for which the tenant still owes rent.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was December 31, 2016, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays, Sundays and statutory holidays, meaning that the latest day on

which the tenant could have disputed the 10 Day Notice was on Tuesday, January 3, 2017.

I further find that the landlord applied for dispute resolution on January 3, 2017, the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution is January 4, 2017. The landlord made their application for dispute resolution one day too early.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of December 23, 2016, with leave to reapply.

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**

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of December 23, 2016 is dismissed, with leave to reapply.

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: January 10, 2017

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Residential Tenancy Branch