



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## EX PARTE PROCEEDING

### (DIRECT REQUEST PROCEEDING)

Pursuant to section 55(4) of the *Residential Tenancy Act*, the decision in this matter was made without a participatory hearing. The decision was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.

A matter regarding WEBSTER PARK INVESTMENTS LTD  
and [tenant name suppressed to protect privacy]

### **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 18, 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 23, 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 December 11, 2015, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on January 31, 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 January 6, 2017, and posted to the tenant's door on January 6, 2017, with a stated effective vacancy date of January 19, 2017, for \$950.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:05 pm on January 6, 2017. 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 January 9, 2017, three days after its posting.

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 is January 14, 2017, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, January 16, 2017.

I further find that the landlord applied for dispute resolution on January 16, 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 was January 17, 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 January 6, 2017, 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 January 6, 2017 is dismissed, with leave to reapply.

The landlord’s application for a Monetary Order is dismissed 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 24, 2017

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Residential Tenancy Branch