



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPR

### 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 for an Order of Possession based on unpaid rent.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on February 17, 2017, the landlords sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 22, 2017, the fifth day after their registered 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*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on May 27, 2016, indicating a monthly rent of \$1,350.00, due on the first day of the month for a tenancy commencing on June 15, 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 February 7, 2017, and personally served to the tenants on February 7, 2017, with a stated effective vacancy date of February 17, 2017, for \$1,600.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 4:30 pm on February 7, 2017. The 10 Day Notice states that the tenants 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 7, 2017.

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 tenants to have either paid the rent or disputed the notice is February 12, 2017, which was a Sunday. The Residential Tenancy Branch is closed on Saturdays, Sundays, and statutory holidays, meaning that the latest day on which the tenants could have disputed the 10 Day Notice was on Tuesday, February 14, 2017.

I further find that the landlords applied for dispute resolution on February 14, 2017, the last day that the tenants had to dispute the 10 Day Notice, and that the earliest date that the landlords could have applied for dispute resolution is February 15, 2017. The landlords made their application for dispute resolution one day too early.

Therefore, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of February 7, 2017, with leave to reapply.

### Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice of February 7, 2017 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: February 22, 2017

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Residential Tenancy Branch

