



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR

### 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.

The landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on November 23, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submission of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants will be deemed to have been served with the Direct Request Proceeding documents on November 28, 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*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on February 28, 2017, indicating a monthly rent of \$780.00, due on the first day of each month for a tenancy commencing on March 01, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 06, 2017 for \$780.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of November 16, 2017;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door on November 06, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Monetary Order Worksheet noted that \$780.00 of the \$780.00 identified as owing in the 10 Day Notice was paid on November 14, 2017.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 09, 2017, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$780.00, as per the tenancy agreement.

Section 46(4) (a) of the *Act*, regarding a landlord's notice for non-payment of rent, states that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent , in which case the notice has no effect."

I find that the Monetary Order Worksheet submitted by the landlord indicates that the tenants have paid the total rent that was owed on the 10 Day Notice on November 14, 2017, within the five day days allowed by the *Act*.

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 November 06, 2017, without leave to reapply.

The 10 Day Notice of November 06, 2017 is cancelled and of no force or effect.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of November 06, 2017 is dismissed, without leave to reapply.

The 10 Day Notice of November 06, 2017 is cancelled and of no force or effect.

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

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: November 27, 2017

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Residential Tenancy Branch