



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR-DR, FFL

### 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 form which declares that on March 02, 2018, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 March 07, 2018, 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord seeks to obtain an Order of Possession based on unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent dated January 19, 2018. In the Application for Dispute Resolution by Direct Request before me, the landlord cites an earlier Application for Dispute Resolution by Direct Request, identified on the first page of this decision, in which the landlord had filed to obtain an Order of Possession based on unpaid rent with respect to the same tenancy and rental unit.

In the previous file, the landlord filed an application to obtain an Order of Possession based on unpaid rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent dated February 16, 2018. In that application, the landlord was successful in obtaining an Order of Possession against the same tenant with respect to the same rental unit arising out of the same tenancy.

### Analysis

I find that the doctrine of *res judicata* applies in the matter before me, as the doctrine of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided. The landlord was already successful in obtaining an Order of Possession for the same rental unit in the earlier file cited on the first page of this decision, which found that the tenancy would effectively end after the landlord served the Order of Possession on the tenant.

Therefore, as the landlord has already been successful in obtaining an Order of Possession to end the tenancy, it is not open for the landlord to re-litigate a matter that has already been decided. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlord's application for an Order of Possession without leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without 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: March 13, 2018

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Residential Tenancy Branch