



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-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 for a Monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 9:00 PM on April 10, 2018, the Landlord served the Notice of Direct Request Proceeding and copies of supporting documents by hand delivering these to the Tenant A.W., who signed upon receiving the documents. Based on the written submission of the Landlord and in accordance with section 89(1) of the Act, I find that Tenant A.G. received the documents on April 10, 2018.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 9:00 PM on April 10, 2018, the Landlord served Tenant N.R. the Notice of Direct Request Proceeding and copies of supporting documents by hand delivering these to Tenant A.W., who signed upon receiving. Based on the written submission of the Landlord and in accordance with section 89(2) of the Act, I find that Tenant N.T. received the documents on April 10, 2018.

### Issues 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*?

Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

## Background and Evidence

The Landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement (the “tenancy agreement”) signed by the Landlord and Tenants on March 24, 2018, indicating a monthly rent of \$2,450.00 due on the first day of the month for a tenancy starting April 1, 2018. The Tenants paid a security deposit of \$1,225.00 and a pet damage deposit of \$1,225.00;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated April 3, 2018, for \$1,225.00 in unpaid rent. The 10 Day Notice provides that the Tenants had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on the stated effective vacancy date of April 13, 2018;
- a copy of a Proof of Service of the 10 Day Notice which indicates that on March 16, 2018, the Landlord hand delivered the 10 Day Notice by leaving a copy with the Tenant A.W., who signed for having received the 10 Day Notice; and,
- a Direct Request Worksheet showing the partial rent owing during the relevant portion of the tenancy.

## Analysis

I have reviewed all documentary evidence and in accordance with section 89 of the *Act*, I find that the Tenants were duly served with the 10 Day Notice on April 3, 2018.

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 was April 8, 2018, which was a Sunday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenants could have disputed the 10 Day Notice was on Monday, April 9, 2018.

I further find that the landlord applied for dispute resolution on April 9, 2018, the last day that the tenants had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution was April 10, 2018. 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 April 3, 2018, 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.

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

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of April 3, 2018 is dismissed, with leave to reapply.

The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the filing fee paid for this application is dismissed 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: April 12, 2018

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Residential Tenancy Branch