



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD/ SIDHU & ASSOCIATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR

### Introduction

This hearing, adjourned from a Direct Request proceeding, dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for an order of possession for unpaid rent pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent KS (the "landlord"). The tenant JP primarily spoke on behalf of both co-tenants.

The landlord testified that they served a 10 Day Notice dated August 8, 2018 by posting on the rental unit door on that date. The tenant confirmed receipt of the 10 Day Notice on that date. Based on the undisputed evidence of the parties I find that the 10 Day Notice was served in accordance with section 88 on August 8, 2018.

The landlord testified that they served the Notice of Direct Request Proceeding on September 12, 2018 by registered mail. The landlord provided a Canada Post tracking number as evidence of service. While the tenant disputed receiving the Notice of Direct Request, I find that based on the evidence of registered mail the tenants are deemed served with the landlord's package in accordance with sections 88, 89 and 90 of the Act on September 17, 2018, five days after mailing.

The landlord testified that they served the Notice of Reconvened Hearing on each of the tenants by registered mail sent on September 19, 2018. The landlord provided Canada Post tracking numbers as evidence of service. While the tenants disputed receiving the materials I find based on the evidence that the tenants are deemed to have been served

with the landlord's package on September 24, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in September, 2017. The current monthly rent is \$1,810.00 payable on the first of the month. A 10 Day Notice indicating a rental arrear of \$2,100.00 was issued on August 8, 2018. The tenants made full payment of the \$2,100.00 arrear amount on August 9, 2018. The landlords have thereafter refused to accept any payment from the tenants.

### Analysis

Section 46(4) of the Act provides that within 5 days after receiving a notice to end tenancy for non-payment of rent a tenant may pay the overdue rent, in which case the notice has no effect.

In the present circumstance the parties agree that the rental arrear of \$2,100.00 was paid in full on the date following the issuance of the 10 Day Notice. I find, therefore that the 10 Day Notice of August 8, 2018 is of no further force or effect.

The landlord testified that while the tenants have attempted to make rent payments for the months of September and October, 2018. They have refused to accept any further payment from the tenants. I find that in refusing to accept rent payment the landlords are the author of their own loss. I find that the landlord may not issue a notice to end tenancy on the basis of non-payment of rent, or repeated late payment for the period when they actively refused to accept payment from the tenants.

While the landlord gave some evidence about the tenants' conduct and use of parking I find that is irrelevant to the present matter, the issuance of a notice to end tenancy for non-payment of rent.

### Conclusion

The 10 Day Notice is cancelled and of no further force or effect. This tenancy continues until 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 *Residential Tenancy Act*.

Dated: October 29, 2018

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Residential Tenancy Branch