



# 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings took place on April 24, 2019. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants will be deemed to have been served with the Direct Request Proceeding documents on April 29, 2019, 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*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on October 28, 2018, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on November 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 18, 2019, for \$1,500.00 in unpaid rent. 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 April 28, 2019;

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail on April 23, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was in fact sent to the tenants on April 18, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### 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 April 23, 2019, five days after its registered mailing.

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 either pay the rent or dispute the notice will be April 28, 2019, which will be a Sunday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenants can dispute the 10 Day Notice will be on Monday, April 29, 2019.

I further find that the landlords applied for dispute resolution on April 23, 2019, before the last day that the tenants have to dispute the 10 Day Notice, and that the earliest date that the landlords can apply for dispute resolution will be April 30, 2019. The landlords made their application for dispute resolution too early.

Therefore, the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of April 18, 2019, is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notice, the landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an Order of Possession on the basis of the 10 Day Notice of April 18, 2019 with leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' application to recover the 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: April 25, 2019

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Residential Tenancy Branch