



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL MNRL OPR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based upon the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord's representative, M.C. and the landlord's witnesses, S.A. and S.M. attended the hearing. The landlord's representative had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord's representative, the landlord's witnesses and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord's witness, S.A., testified the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May 10, 2019 which is deemed received by the landlord five days later, on May 15, 2019, under section 90 of the *Act*. The landlord's witness provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord's witness, I find the landlord served the tenant with the documents pursuant to section 89 of the *Act*.

*Preliminary Issue: Severance of Portion of Landlord's Application*

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Ten-Day Notice and the continuation of this tenancy is not sufficiently related to any of the landlord's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the Ten-Day Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the landlord's application for an order for possession based upon the Ten-Day and recovery of the filing fee for this application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based upon the landlord's Ten-Day Notice pursuant to section 55?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord submitted a notice to end tenancy on March 25, 2019 stating a move out date of April 1, 2019. The landlord's witness testified that this notice to end tenancy was abandoned because there were inadvertent mistakes on the notice.

The landlord submitted the Ten-Day Notice relevant to this application on May 26, 2019, which is after the application for dispute resolution was filed on May 9, 2019. The Ten-Day Notice stated a move out date of May 6, 2019.

The landlord's witness, S.M. testified that he posted the Ten-Day Notice on the tenant's door on May 26, 2019. The landlord's witness, S.M. attempted to make legal submissions on behalf of the landlord. I asked S.M. whether he was appearing as an advocate for the landlord or just a witness and S.M. confirmed that he was only appearing as a witness. As such, I did not permit witness S.M. to make submissions on behalf of the landlord.

The landlord's representative did not have an explanation as to why the application for dispute resolution was filed before the Ten-Day Notice was served or why the move out date stated on the notice was set for a date before the Ten-Day Notice was issued.

### Analysis

Section 55(2)(b) of the *Act* states that

...a landlord may request an order of possession of a rental unit ... by making an application for dispute resolution ... a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

In this matter, the landlord did not wait until the tenant's time for making an application had expired before filing her application for dispute resolution as required by section 55(2)(b). In fact, the landlord filed her application for she even served the Ten-Day Notice. As such this Ten-Day Notice is premature and the landlord is not entitled to an order of possession herein pursuant to section 55(2)(b).

Accordingly, the landlord application for an order of possession pursuant to section 55 is dismissed. Furthermore, since the Ten-Day Notice states an effective date before the date of service of the notice, I dismiss the application for an order of possession pursuant to this Ten-Day Notice without leave to reapply.

Since the landlord has not prevailed in this matter, I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72 of the *Act* without leave to reapply.

### Conclusion

I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply.

I dismiss the landlord's application for an order of possession without leave to reapply.

I dismiss the landlord's application for reimbursement of the filing fee 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: June 21, 2019

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Residential Tenancy Branch