# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes        OPR-DR

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.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 20, 2020, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on September 23, 2020, the third day after their posting.

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*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on March 1, 2020, indicating a monthly rent of $1,100.00, due on the first day of each month for a tenancy commencing on March 1, 2020;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 4, 2020, for $1,100.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 September 14, 2020;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 3:15 pm on September 4, 2020; 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 tenant was deemed served with the 10 Day Notice on September 7, 2020, three days after its posting.

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 government office (such as the Residential Tenancy Branch or Service BC) 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 tenant to have either paid the rent or disputed the notice was September 12, 2020, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, September 14, 2020.

I further find that the landlord applied for dispute resolution on September 13, 2020, before the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution was September 15, 2020. The landlord made their application for dispute resolution too early.

Therefore, the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of September 4, 2020, is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of September 4, 2020 with 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: September 25, 2020

_____
Residential Tenancy Branch