



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT Limited Partnership and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR-PP, 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.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on September 22, 2020, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on September 27, 2020, the fifth day after their registered mailing.

### 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*?

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

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

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 January 15, 2017, indicating a monthly rent of \$975.00, due on the first day of each month for a tenancy commencing on January 15, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 4, 2020, for \$1,063.28 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 17, 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 1:00 pm on September 1, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

Section 46 (1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving a 10 Day Notice.

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on September 1, 2020, the same day that the monthly rent was due for September 2020, which is not in accordance with section 46 of the *Act*.

I find that the landlord has not complied with the provisions of section 46 of the *Act*, regarding the 10 Day Notice issued to the tenant.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated September 4, 2020, without leave to reapply.

The 10 Day Notice dated September 4, 2020, is cancelled and of no force or effect.

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 based on the 10 Day Notice dated September 4, 2020 is dismissed, without leave to reapply.

The 10 Day Notice dated September 4, 2020, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's 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: September 29, 2020

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Residential Tenancy Branch