



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and  
[tenant name suppressed to protect privacy]

## **DECISION**

OPR-DR-PP, OPRM-DR, FFL

### **Dispute Codes**

### **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 and a Monetary Order.

The landlord submitted one signed Proof of Service Notice of Direct Request Proceeding which declares that on October 22, 2020, the landlord sent the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post receipt containing two Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on October 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 monetary compensation for unpaid rent pursuant to section 67 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 a landlord who is not the applicant and the tenants on October 31, 2014, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on November 1, 2014;
- A copy of a Property Tax Notice listing the applicant as the owner of the rental property;
- A copy of five Notice of Rent Increase forms showing the rent being increased from \$800.00 to the monthly rent amount of \$932.72;
- A copy of a Repayment Plan dated August 24, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$127.34 starting on October 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 6, 2020, for \$1,232.80 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 October 20, 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 tenants' door at 12:00 pm on October 7, 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 tenants were deemed served with the 10 Day Notice on October 10, 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.

I find that the fifth day for the tenants to have either paid the rent or disputed the notice was October 15, 2020. I further find that the earliest date that the landlord could have applied for dispute resolution was October 16, 2020.

I find that the landlord applied for dispute resolution on October 15, 2020, the last day that the tenants had to dispute the 10 Day Notice and that 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 dated October 6, 2020 is dismissed, with leave to reapply.

For the same reasons identified above, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated October 6, 2020, with leave to reapply.

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

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: November 03, 2020

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Residential Tenancy Branch