



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, OPUM-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 and a Monetary Order.

The landlord submitted two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on November 17, 2020, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the 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 November 22, 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 the landlord and the tenants on April 1, 2019, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on April 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 5, 2020, for \$7,150.00 in unpaid rent and \$626.51 in unpaid utilities. 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 January 15, 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 11:00 (a.m. or p.m. not indicated) on January 5, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment.

A previously decided issue is comparable to the criminal law concept of double jeopardy.

In their Application for Dispute Resolution, the landlord has indicated that they obtained an Order of Possession against the tenant in January 2020, but that they were not able to enforce it due to the COVID-19 pandemic.

I have reviewed the previous decision dated February 3, 2020, and I find that another adjudicator made a finding and issued an Order of Possession based on the 10 Day Notice dated January 5, 2020.

I therefore find that this current application for an Order of Possession is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

For this reason, the landlord's application for an Order of Possession based on the 10 Day Notice dated January 5, 2020 is dismissed without leave to reapply.

I note that, in the previous decision, the adjudicator did not issue a Monetary Order for unpaid rent and that the landlord's monetary claim is not *res judicata*. However, in a Direct Request Proceeding, a landlord can only pursue unpaid rent resulting from a valid 10 Day Notice issued to the tenant.

As I cannot consider the 10 Day Notice dated January 5, 2020, I find I also cannot consider the monetary portion of the landlord's claim.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice dated January 5, 2020 without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: December 02, 2020

---

Residential Tenancy Branch