



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, OPUM-DR, 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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted three signed Proof of Service Notice of Direct Request Proceeding forms which declare that on November 19, 2020, the landlords personally served each of the tenants the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service Notice of Direct Request Proceeding forms to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on November 19, 2020.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names landlords who are not the applicants and was signed by the tenants on May 2, 2019, indicating a monthly

rent of \$2,650.00, due on the second day of each month for a tenancy commencing on May 2, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 3, 2020, for \$5,400.00 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 November 15, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 3:00 pm on November 3, 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on November 3, 2020.

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 tenants to have either paid the rent or disputed the notice was November 8, 2020, which was a Sunday. 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, November 9, 2020.

I further find that the landlords applied for dispute resolution on November 9, 2020, the last day that the tenants had to dispute the 10 Day Notice, and that the earliest date that the landlords could have applied for dispute resolution was November 10, 2020. The landlords made their application for dispute resolution too early.

I also note that the landlords named on the tenancy agreement do not match the landlords named on the Application for Dispute Resolution. There is also not evidence or documentation showing that the applicants are the owners of the rental property or are otherwise entitled to any orders that may result from an Application for Dispute Resolution.

For the reasons listed above, the landlords' application for an Order of Possession and a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlords' application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlords' 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: December 08, 2020

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Residential Tenancy Branch