



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, OPRM-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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 21, 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.

### 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 on August 9, 2020, indicating a monthly rent of \$1,150.00, due on the first day of each month for a tenancy commencing on August 15, 2020;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 7, 2020, for \$2,300.00 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 November 17, 2020;
- A copy of a photograph showing a 10 Day Notice attached to a door; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

The landlord has indicated in their Application for Dispute Resolution that the 10 Day Notice was attached to the tenant's door on November 7, 2020. The landlord submitted a copy of a photograph showing a 10 Day Notice attached to a door to confirm this service.

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".

Section 90 of the *Act* states that a document attached to the tenant's door is considered received three days later.

When a 10 Day Notice is posted to the door on November 7, 2020, it is considered received on November 10, 2020, meaning the fifth day for the tenant to either pay the rent or dispute the notice would be November 15, 2020.

I find that the landlord applied for dispute resolution on November 13, 2020, before the last day the tenant would have had to dispute a 10 Day Notice attached to the door on November 7, 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 November 7, 2020, is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notice, 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 of November 7, 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: December 09, 2020

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Residential Tenancy Branch