



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REHOME PROPERTY INC.  
and [tenant name suppressed to protect privacy]

## **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 filed by the Landlord for an order of possession and a monetary order based on unpaid rent, and an order granting recovery of the filing fee.

The Landlord submitted a signed Proof of Service - Notice of Direct Request Proceeding document which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding and supporting documents by registered mail on December 30, 2020. The Landlord provided copies of the Canada Post receipts 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 the Tenant is deemed to have received these documents on January 4, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 June 2, 2020, indicating a monthly rent of \$1,600.00, due on the first day of each month for a month-to-month tenancy commencing on June 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2020 (the “10 Day Notice”), for \$2,900.00 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 10, 2020.
- A copy of a Proof of Service - Notice to End Tenancy form which indicates that the 10 Day Notice was served on the Tenant in person on November 1, 2020, which service was witnessed by S.T.

### Analysis

I have reviewed all documentary evidence and I find that the Tenant is obligated to pay the monthly rent in the amount of \$1,600.00, as per the tenancy agreement.

However, section 46(1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

*“A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”*  
(emphasis added)

In this case, I find that the tenancy agreement indicates that the monthly rent is due on the first day of every month. I further find that the Landlord issued the 10 Day Notice and served it on the Tenant in person on November 1, 2020, the same day that the monthly rent was due, which is not in accordance with section 46(1) of the *Act*.

Therefore, 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. As a result, the 10 Day Notice is cancelled and is of no force or effect.

Considering the above, the Landlord's application to end this tenancy and obtain an order of possession based on the 10 Day Notice is dismissed without leave to reapply.

For the same reasons, 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

The Landlord's application for an order of possession based on the 10 Day Notice dated November 1, 2020 is dismissed without leave to reapply. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

The Landlord's application to recover the filing fee paid for this application is dismissed 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: January 19, 2021

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Residential Tenancy Branch