



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-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 Landlords to obtain an order of possession and a monetary order based on unpaid rent.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the Landlords on September 12, 2021.

The Landlords submitted a signed Proof of Service Notice of Direct Request Proceeding form which declares that on September 24, 2021, the Landlords sent Tenant B.L. the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The Landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Based on the written submissions and evidence of the Landlords and in accordance with sections 89(1) and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 24, 2021 and are deemed to have been received by Tenant B.L. on September 29, 2021, the fifth day after they were mailed.

The Landlords submitted a second signed Proof of Service Notice of Direct Request Proceeding form which declares that on September 24, 2021, the Landlords sent Tenant K.M. the Notice of Dispute Resolution Proceeding - Direct Request by email in accordance with an order for substituted service. The Landlords provided a copy of the sent email with the Direct Request Proceeding documents as attachments to confirm this service.

Based on the written submissions and evidence of the Landlords and in accordance with section 71(1) of the *Act*, I find that the Direct Request Proceeding documents were served on September 24, 2021 and are deemed to have been received by Tenant K.M. on September 27, 2021, the third day after they were emailed.

### Issues 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*?

### 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 Landlords and the Tenants on May 23, 2017, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on June 1, 2017;
- a copy of one Notice of Rent Increase form showing the rent being increased from \$1,300.00 to the monthly rent amount of \$1,350.00.
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 3, 2021, for \$1,350.00 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 September 16, 2021;
- 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 1:50pm on September 3, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and paid during the relevant period.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was served on September 3, 2021 and is considered to have been received by the Tenants on September 6, 2021, three days after it was posted to the door.

Section 46 (4) of the *Act* states that, within five days of the Tenants receiving the 10 Day Notice, the Tenants 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 September 11, 2021, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the Tenants could have disputed the 10 Day Notice was on Monday, September 13, 2021.

I further find that the Landlords applied for dispute resolution on September 12, 2021, the day before 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 September 14, 2021. The Landlords made their application for dispute resolution too early.

Therefore, the Landlords' application to end this tenancy and obtain an order of possession based on the 10 Day Notice dated September 3, 2021, is dismissed with leave to reapply.

For the same reasons identified in the 10 Day Notice, the Landlords' application for a monetary order for unpaid rent is dismissed with leave to reapply.

### Conclusion

I dismiss the Landlords' application for an order of possession based on the 10 Day Notice dated September 3, 2021 with leave to reapply.

I dismiss the Landlords' 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: October 22, 2021

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Residential Tenancy Branch