



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-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 to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on December 27, 2021.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 12, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post receipt 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 that the Direct Request Proceeding documents were served on January 12, 2021 and are deemed to have been received by the tenant on January 17, 2022, 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

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 October 1, 2020, indicating a monthly rent of \$2,300.00, due on the first day of each month for a tenancy commencing on October 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 17, 2021, for \$2,346.00 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 December 30, 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 tenant's door at 2:00 pm on December 17, 2021
- A copy of a photograph showing a 10 Day Notice attached to a door
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

## Analysis

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 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 December 17, 2021 and is considered to have been received by the tenant on December 20, 2021, three days after its posting.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was December 25, 2021, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays. The Residential Tenancy branch was also closed on Monday December 27, 2021 and Tuesday December 28, 2021 for the Christmas holidays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Wednesday, December 29, 2021.

I further find that the landlord applied for dispute resolution on December 27, 2021, before the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlord could have applied for dispute resolution was December 30, 2021. 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 December 17, 2021, 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 December 17, 2021 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: January 31, 2022

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Residential Tenancy Branch