



# 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 February 15, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on February 23, 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 Customer 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 February 23, 2022 and are deemed to have been received by the tenant on February 28, 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

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 March 1, 2021 and the tenant on February 28, 2021, indicating a monthly rent of \$1,800.00, due on the thirty-first day of each month for a tenancy commencing on March 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2022, for \$1,800.00 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 February 20, 2022
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 11:18 am on February 2, 2022
- A copy of a Canada Post tracking report containing the tracking number to confirm the 10 Day Notice was sent to the tenant on February 2, 2022 and was successfully delivered on February 12, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

Section 90 of the *Act* states that a document sent by registered mail is considered to be received five days after it was sent. However, Policy guideline #12 on service provisions elaborates with the following information:

*“Deemed receipt provisions are generally used in the absence of evidence of the date documents were actually received.”*

The landlord submitted a copy of a Canada Post tracking report to confirm the date the 10 Day Notice was actually received by the tenant. In accordance with section 88 of the *Act*, I find that the 10 Day Notice was served on February 2, 2022, and has been received by the tenant on February 12, 2022, the day the tenant signed for receipt of the registered mailing.

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.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was February 17, 2022. I further find that the earliest date that the landlord could have applied for dispute resolution was February 18, 2022.

I find that the landlord applied for dispute resolution on February 15, 2022, before the last day that the tenant had to dispute the 10 Day Notice and that 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 dated February 2, 2022, is dismissed, with leave to reapply.

For the same reasons identified above, 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 dated February 2, 2022, 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: March 16, 2022

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Residential Tenancy Branch