



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-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 landlord for an Order of Possession based on unpaid rent.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on November 25, 2020, the landlord posted the Notice of Direct Request Proceeding to the door of the rental unit. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89(2) and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 28, 2020, the third day after their posting.

### 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*?

### 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 June 1, 2015, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on June 1, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 1, 2020, for \$2,000.00 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 11, 2020;
- 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 3:43 (a.m. or p.m. not indicated) on November 1, 2020; and



- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

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."*

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. I further find that the landlord has issued the 10 Day Notice on November 1, 2020, the same day that the monthly rent was due for November 2020, which is not in accordance with section 46 of the *Act*.

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.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice dated November 1, 2020, without leave to reapply.

The 10 Day Notice dated November 1, 2020, is cancelled and of no force or effect.

### 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 10 Day Notice dated November 1, 2020, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 16, 2020

---

Residential Tenancy Branch