



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

**OPR MNR MNSD FF**

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 6, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding in person to the tenant. The landlord received the Direct Request Proceeding package on March 5, 2009 and initiated service March 6, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served, if given or served in person, on the date it was served.

Based on the written submissions of the Landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and utilities, whether the landlord may retain the deposit and filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence.

### 10 Day Notice to End Tenancy

The landlord submitted a copy of the 10 Day Notice to End Tenancy which was served in person to the tenant on February 27, 2009. The tenant has signed receipt of the 10 Day Notice to End Tenancy on February 27, 2009.

The 10 Day Notice to End Tenancy shows that it was issued because “you have failed to pay rent in the amount of \$1,050.00 that was due on 1 March 2009.”

Section 46 of the *Residential Tenancy Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due. In this case notice was issued on February 27, 2009, two days **prior** to when it was due.

### Analysis

I find that the 10 Day Notice to End Tenancy has not been issued pursuant to Section 46(1) of the *Residential Tenancy Act*.

### Conclusion

Having found that the landlord has served a 10 day Notice to End Tenancy that does not meet the requirements of the *Act*, I dismiss the landlord’s application without leave to reapply.

March 25, 2009  
Date of Decision

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Dispute Resolution Officer