



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 15, 2009, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to keep all or part of the security deposit?
4. Is the Landlord entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 28, 2008 and March 29, 2009 for a one year fixed term tenancy beginning April 1, 2008 for the monthly rent of \$1,250.00 due on 1st of the month and a security deposit of \$625.00 was paid on March 28, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 2, 2009 with an effective vacancy date of September 11, 2009 due to \$1,250.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant had failed to pay the rent owed for the month of September 2009 and that the Tenant was served a 10



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Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant's rental unit on September 2, 2009 at 2:00 p.m.

The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

## Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on September 5, 2009, and the effective date of the notice is amended to September 15, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

## Conclusion

I find pursuant to s. 55(2)(b) of the *Act* that the Landlord is entitled to an Order of Possession effective **48 hours after service of it on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord is entitled to monetary compensation pursuant section 67 of the *Act* in the amount of **\$1,300.00** comprised of \$1,250.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord may retain the security deposit and accrued interest \$7.15 in partial satisfaction of the claim and grant an order for the balance due of **\$667.85**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 22, 2009.

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Dispute Resolution Officer