



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR, MNSD, FF

### Introduction

This matter was conducted by way of 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, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 4:30 pm on November 24, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit address. The landlord provided a Canada Post receipt, tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on June 22, 2007, indicating a monthly rent of \$850.00 due on the first day of the month and that a deposit of \$425.00;
- A copy of a tenant ledger; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 4, 2009 with a stated effective vacancy date of November 14, 2009, for \$2,498.00 in unpaid rent due on November 1, 2009.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the male tenant on November 4, 2009 at 5:30 pm. The Act deems the tenants were served on the day of personal delivery.

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

The landlord's evidence indicates that the tenants last paid their rent in full on February 1, 2009. The tenant ledger indicates that on September 21, 2009 the tenants were \$4.00 in arrears. The tenants have made payments in the sum of \$850.00 since that time and have been charged \$897.00 per month rent, plus two late fees in the sum of \$25.00.; for total arrears on November 17, 2009 in the sum of \$998.00. The tenant ledger indicates that throughout the tenancy the tenants have often made rent payments in installments.

The tenant ledger indicates that a rent payment in the sum of \$500.00 was made on November 17, 2009 for October rent arrears.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on November 4, 2009.

The landlord's evidence indicates that the tenants made a rent payment on November 17, 2009; three days after the effective date of the notice. The landlord has not provided any evidence of their intent at the time this payment was made. As there is evidence that the tenants have made past rent payments throughout the month and in the absence of evidence of the landlord's intent at the time the November rent payment was made I find that this application must be reconvened to a participatory hearing in

order to establish the expressed intent of the landlord when the November 17, 2009 rent payment was made. Further, the tenant ledger submitted as evidence indicates past payments that were accepted for use and occupancy; the November 17, 2009 payment does not include that notation on the ledger.

### Conclusion

Having found that the landlord has not provided evidence of their intent at the time of the November 17, 2009 rent payment, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of rent payments and the intent of the landlord at the time of payment.

Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of 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 08, 2009.

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Dispute Resolution Officer