



# 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 5:00 p.m. on December 16, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenant has 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on April 8, 2009, indicating a monthly rent of \$900.00 due before the first day of the month and that a deposit of \$450.00 was paid on April 30, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 4, 2009 with a stated effective vacancy date of December 17, 2009, for \$608.93 in unpaid rent and \$124.31 in unpaid utilities due on December 1, 2009.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on December 4, 2009 at 12:30 p.m. with a witness present. The Act deems the tenant was served on December 7, 2009.

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 from the date of service.

The Application details indicate that the tenant has not been paying full rent or utilities for several months.

### 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 December 7, 2009.

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; however, I am unable to determine the details of the amount of rent that is in arrears. The landlord has not provided a financial accounting that demonstrates a monthly breakdown of amounts owed. The landlord has not provided copies of utility bills to support the claim for compensation. Therefore, I find that the claim for compensation is dismissed with leave to reapply.

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; December 17, 2009.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost which may be deducted from the deposit held in trust. The balance of the deposit, \$400.00, shall be disbursed as required by section 38 of the Act.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$50.00** for the fee paid for this application. The landlord will retain \$50.00 from the deposit and disburse the \$400.00 balance as determined by section 38 of the Act.

The claim for compensation for unpaid rent and utilities is dismissed with 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: January 12, 2010.

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Dispute Resolution Officer