



# 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 on December 17, 2009, the landlord served both tenants with the Notice of Direct Request Proceeding by registered mail. The landlord has provided a copy of a Canada Post receipt indicating the unit number and street name used for service, which matches the tenant's service address indicated on the Application for Dispute Resolution. The landlord has also served both tenants using the same registered mail.

I find that the tenants have been sufficiently served for the purposes of the landlord's request for an order of possession, as provided by section 88 of the Act. I find that the landlord has failed to complete service to each tenant, as required under section 89 of the Act, for the purposes of a monetary claim; therefore, the landlord's request for monetary compensation is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

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 November 15, 2009, indicating a monthly rent of \$840.00 due on the 31<sup>st</sup> day of the month and that a deposit of \$420.00 was paid on November 14, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 5, 2009 with a stated effective vacancy date of December 15, 2009, for \$840.00 in unpaid rent and what appears to be a \$20.00 fee.

Documentary evidence filed by the landlord indicates that the tenant's have failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on December 15, 2009. The landlord provided a proof of service document which is signed by each of the tenants, confirming receipt of the Notice. 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.

### 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 December 5, 2009.

I accept the evidence before me that the tenants have failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; December 15, 2009.

I find that the landlord has not received rent in the sum of \$840.00 for December rent. The landlord is at liberty to submit another Application for Dispute Resolution requesting a monetary Order. I note the tenancy agreement does not include a term for fees to be levied against the tenants.

Therefore, I find that the landlord is entitled to an Order of possession and the application fee cost.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants 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 retain \$50.00 from the deposit which is held in trust; as provided by section 38(6) of the Act.

The landlord's monetary claim 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 20, 2010.

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Dispute Resolution Officer