



# Dispute Resolution Services

Page: 1

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 January 13, 2010 at 1:12 p.m. the landlord personally served each tenant with the Notice of Direct Request Proceeding at the rental unit address. Section 90 of the Act determines that a document is deemed to have been served when personally delivered.

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 May 29, 2009, indicating a monthly rent of \$990.00 due on or before the first day of the month and that a deposit of \$495.00 was paid on May 28, 2009;
- A copy of an undated letter from the tenants to the landlord indicating they will pay the rent arrears;
- A copy of a tenant ledger; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 6, 2010 with a stated effective vacancy date of January 16, 2010, for \$3,750.00 in unpaid rent due January 1, 2010.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and served the 10 Day Notice to End Tenancy for Unpaid Rent at 11:55 a.m. to the male tenant by personal delivery on January 6, 2010. The Act deems the tenants were served on the day of personal delivery.

The Notice states that the tenant 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 tenant ledger indicates that since the start of the tenancy the tenants have paid \$4,240.00 rent and owed \$7,920.00; resulting in arrears in the sum of \$3,680.00. The landlord is claiming fees in the sum of \$70.00. The following rent payments were made:

May 2009	990.00
June	990.00
July	800.00
August	600.00
September	410.00
October	450.00
November	0
December	0
January 2010	
	4,240.00

### Analysis

I have reviewed all documentary evidence and accept that the tenant 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 January 6, 2010.

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; January 16, 2010.

I find that the landlord is entitled to compensation for rent arrears incurred from July 2009 to January 2010 in the sum of \$3,680. The claim for late fees is dismissed with leave to reapply as only rent is considered via the Direct Request Proceeding process.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, 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 monetary compensation pursuant section 67 in the amount of **\$3,730.00** comprised of \$3,680.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$495.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$3,235.00**. 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: January 22, 2010.

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Dispute Resolution Officer