



# 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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 12, 2010 the landlord served a tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

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

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; for all or part of the security deposit and to recover the filing fee from one of the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for one of the tenants;
- A copy of a residential tenancy agreement which was signed by the tenants but not the landlord on October 14, 2009 for a 6 month fixed term tenancy beginning on November 1, 2009 for the monthly rent of \$1,000.00 due on the 1<sup>st</sup> of the month and a security deposit of \$375.00 was required – there is no indication that a security deposit was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010 with an effective vacancy date of January 12, 2010 due to \$1,000.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of January, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on January 3, 2010 at 9:30 a.m.

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.

### Analysis

The landlord has submitted a tenancy agreement that lists two tenants on the tenancy agreement and has submitted an Application for Dispute Resolution and served Notice of the Direct Request Proceeding to only one of the tenants. All parties must be served with notice of the application and the proceeding.

The landlord has applied to keep all or part of the security deposit and yet the tenancy agreement states that the tenant "will pay" a security deposit and no proof of payment of the security deposit has been provided.

And finally, the tenancy agreement submitted by the landlord is unsigned by the landlord, as such I am not able to establish that a valid tenancy exists between the parties.

### Conclusion

Having found that tenancy agreement is not complete and there are additional questions regarding the tenancy, I find that a hearing is required. In accordance with section 74 of the Act, I hereby order that the direct request proceeding be reconvened as a teleconference hearing, on the date and time set out in the enclosed Notice of Reconvened Hearing.

The landlord must serve the tenant with a copy of the Notice of Reconvened Hearing within **three (3) days** of receiving this decision

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