



# 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 15, 2010 the landlord served the 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 the tenant 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, pursuant to sections 46 and 55 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the landlords on December 18, 2009 and by the tenant on January 4, 2010 for a 1 year fixed term tenancy beginning on December 10, 2009 for the monthly rent of \$1,400.00 due on the 1<sup>st</sup> of the month and a security deposit of \$700.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with an effective vacancy date of January 14, 2010 due to \$1,600.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of December, 2009 and January, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting it on the tenant's door on January 4, 2010 at 11:00 a.m.

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.

### Analysis

I have reviewed the material provided and note that the tenancy agreement was signed on the same date that the 10 Day Notice to End Tenancy was issued. As per the Residential Tenancy Policy Guidelines:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights to end the tenancy. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

As the landlord had the tenant sign a tenancy agreement on the same dates as the notice to end tenancy was issued, I find the notice to end tenancy is invalid as the landlord has made an implied waiver to his rights to end the tenancy by entering into a new tenancy agreement with the tenant on the same date.

### Conclusion

Based on my above noted finding, I dismiss the landlord's application without 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 25, 2010.

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Dispute Resolution Officer