



# 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 Residential Tenancy Branch provided the Notice of Direct Request Proceedings to the landlord on January 21, 2010. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 28, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document send by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

### 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 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 the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on July 15, 2009 for a 1 year fixed term tenancy beginning on August 1, 2009 for the monthly rent of \$1,100.00 due on the 1<sup>st</sup> of the month and a security deposit of \$550.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 6, 2010 with an effective vacancy date of January 20, 2010 due to \$1,100.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants 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 by registered mail on January 6, 2010.

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

A requirement of the Direct Request Proceeding process is that the landlord must serve the tenant with the Proceeding Package within three days of receiving the package from the Residential Tenancy Branch. The Branch forwarded the package to the landlord on January 21, 2010. As per the landlord's submitted Proof of Service the landlord forwarded the package to the tenant via registered mail on January 28, 2010.

As the date of service is substantially greater than the three days required, I find the landlord has failed to comply with service requirements of this process.

### Conclusion

Based on the above, I dismiss the landlord's application, in its entirety, 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: February 03, 2010.

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Dispute Resolution Officer