



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes – OPR, MNR

#### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (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 July 19, 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.

As noted below the tenancy agreement submitted was unreadable, as a result the Residential Tenancy Branch contacted the landlord, several times, to submit a different copy of the tenancy agreement. The landlord failed to submit a readable copy.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to sections 46, 55, 67, and 72 of the *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;
- An unreadable copy of a residential tenancy agreement; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 2, 2010 with an effective vacancy date of July 12, 2010 due to \$2,050.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant paid \$1,000.00 for July 2010 and still has to pay \$1,050.00 for the month of June and that the tenant was

served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on July 2, 2010 at 3:20 p.m. The landlord has provided written confirmation that this service was witnessed.

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 all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on July 5, 2010 and the effective date of the notice is amended to July 15, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

However, as the landlord has failed to submit a readable copy of the tenancy agreement, I am unable to determine the terms of the tenancy agreement to determine how much rent is, when it is due or what would constitute it being late.

### Conclusion

As a result of my findings above, I dismiss the landlord's Application for Dispute Resolution, 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: August 03, 2010.

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Dispute Resolution Officer