



# 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. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 20, 2010 at 7:30 p.m. the landlord served both tenants individually with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the tenants have 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 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on January 8, 2009 for a 1 year fixed term tenancy beginning on February 1, 2009 and converting to a month to month tenancy on January 31, 2010 for the monthly rent of \$900.00 due on the 1<sup>st</sup> of the month and a security deposit of \$450.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 2, 2010 with an effective vacancy date of October 12, 2010 due to \$925.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of October 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was either posted to the rental unit door

or served personally. The landlord has provided a Proof of Service document that states the landlord had a third party witness both the landlord posting it on the tenant's door and serving it to one of the tenant's personally. The landlord stipulates the personal service states it was served to the female tenant at 2:25 p.m. on October 2, 2010 but no indication when it was posted to the door of the rental unit.

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

I have reviewed all documentary evidence and find I cannot determine that the tenants have been served with notice to end tenancy as declared by the landlord. In addition the landlord states the tenants paid \$350.00 but there is no indication if this was received prior to or post the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent.

If the amount was received after the issuance of the 10 Day Notice, the landlord has provided no indication if the landlord intends to reinstate the tenancy or waive the 10 Day Notice.

Finally, the landlord has provided a tenancy agreement that stipulates that rent is \$900.00 per month but has issued a 10 Day Notice to End Tenancy for Unpaid Rent and submitted an application claiming the amount of \$925.00 without an explanation regarding why the amount is \$25.00 above the rental amount in the tenancy agreement.

### Conclusion

For the reasons noted 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: October 27, 2010.

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Dispute Resolution Officer