



# 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 21, 2010 the landlord served the tenants 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 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 38, 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 May 19, 2010 for a fixed term tenancy beginning on May 17, 2010 and ending on November 30, 2010 for the monthly rent of \$1,650.00 due on the 1<sup>st</sup> of the month and a security deposit of \$825.00 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 \$1,650.00 in unpaid rent.

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

the rental unit door on October 2, 2010 at 10:30 a.m. and that this service was witnessed by the same person who indicated they served the documents. In addition the Proof of Service indicates a third party witnessed the landlord serve the 10 Day Notice directly to the tenants.

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 that I cannot determine if the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent and if they did by which method, either in person or by posting the notice on the rental unit door. The method of service impacts my ability to determine the effective date of the notice to end the tenancy.

### 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 29, 2010.

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Dispute Resolution Officer