



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded 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 for unpaid rent and a Monetary Order for unpaid rent.

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 Tenant's sister, an adult who is an adult who apparently resides with the tenant, with the Notice of Direct Request Proceeding. The Tenant's sister signed the proof of service document acknowledging receipt of the direct request package.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Is the Landlord entitled to a Monetary Order for unpaid rent and to keep the security deposit pursuant to section 67 of the *Residential Tenancy Act (Act)*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant; and
- A copy of a residential tenancy agreement which was signed by the Landlords and the male Tenant on for a month to month tenancy effective August 01, 2010. Rent of \$895.00 is due on 1st of the month. A deposit of \$450.00 and a pet deposit of \$100.00 was paid on July 22, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 14, 2010, with an effective vacancy date of October 19, 2010 due to \$1,790.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the Tenant's sister on October 14, 2010.

### Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution either in person or by registered mail to an address where the Tenants reside, in accordance with section 89 (1) of the Act.

In this case the Landlord personally served the Tenant's sister, an adult who appears to reside at the rental unit. Section 89(2)(d) provides that if the notice of direct request application was served to an adult who appears to reside at the unit then service is met only for the request of an Order of Possession.

Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply, and the following decision will only consider the Landlord's request for an Order of Possession.

**Order of Possession** - 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 October 14, 2010 and the effective date of the notice is October 24, 2010 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has 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 and I hereby approve the Landlord's request for an Order of Possession.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court. 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: November 01, 2010.

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Dispute Resolution Officer