



# 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 December 10, 2010 at 4:58 p.m. the landlord served the male tenant with the Notice of Direct Request Proceeding personally and at 5:02 p.m. served the female tenant by posting the Notice of Direct Request Proceeding on the rental unit door. Section 90 of the *Act* states a document posted on the rental unit door is deemed served on the 3<sup>rd</sup> day after it is posted.

Section 89(1) of the *Act* stipulates that an application for dispute resolution must be given in one of the following ways: leaving a copy with the person; by sending a copy by registered mail to the address at which the tenant resides; by sending a copy by registered mail to a forwarding address provided by the tenant. Section 89(2) allows a landlord to serve Direct Request Proceeding documents for the order of possession only by posting it on the door of the rental unit.

Based on the written submissions of the landlord, I find that the male tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents. However, I find the female tenant has been sufficiently served with the Direct Request Proceeding documents only as it relates to the landlord's application for an order of possession.

### 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 *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 landlord and the female tenant on May 15, 2007 for a month to month tenancy beginning on June 1, 2007 for the monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month and a security deposit of \$550.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 2, 2010 with an effective vacancy date of November 13, 2010 due to \$2,200.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of September, October and November 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on November 2, 2010 at 4:30 p.m. and that this service was witnessed by a third party.

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 accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on November 5, 2010, 2010 and the effective date of the notice is amended to November 15, 2010, pursuant to Section 53 of the Act. I accept the evidence before me that the tenants 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 tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I note that despite the male tenant being listed as a tenant on the tenancy agreement that the only tenant signature on the agreement is the female tenant, as such, I dismiss the landlord's financial claim for unpaid rent and for an order of possession against the male tenant, **without** leave to reapply, as I find that he is not a signing party to the tenancy agreement.

As previously noted, as the landlord failed to serve the female tenant with the Direct Request Proceeding documents in a manner that is compliant with Section 89 of the Act, I dismiss the monetary portion of the landlord's claim against the female tenant, **with** leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the female tenant**. This order must be served on the female 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: December 16, 2010.

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Dispute Resolution Officer