



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted 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 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 January 7, 2011 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act 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 and 67 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 09, 2010 for a 6 month fixed term tenancy beginning July 01, 2010 for the monthly rent of \$525.00 due in advance on the 1st of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 16, 2010 with an effective vacancy date of December 26, 2010 due to \$480.50 in unpaid rent.

The Landlord's written submissions claim that the Tenant had accumulated arrears of **rent** for October, November and December 2010 of \$480.50 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person on December 16, 2010. 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 of the documentary evidence and accept that the Tenant was served with the Notice to End Tenancy as declared by the Landlord. However, the Landlord did not provide an accounting of the alleged rent arrears and a letter written by the Tenant and submitted as evidence by the Landlord indicates that at least \$92.00 of the alleged rent arrears was instead for late fees. Given that late fees are not "rent" as defined by the Act, I find that further evidence is required to determine if the 10 Day Notice is an effective Notice to end the tenancy.

### Conclusion

Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

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: January 17, 2011.

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Residential Tenancy Branch