



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **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 February 9, 2011, at 6:00 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents in accordance with the Act.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy 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;
- A copy of a residential tenancy agreement which was signed by all parties on, for a month to month tenancy agreement effective August 31, 2010 for the monthly

rent of \$500.00 due on the last day of the month and a deposit of \$250.00 was paid on August 6, 2010; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2011, with an effective vacancy date of February 12, 2011 due to \$800.00 in unpaid rent (\$250.00 for January 2011, and \$520.00 for February 2011).

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent in person on February 2, 2011 at 7:50 p.m. The Tenant signed the proof of service document acknowledging receipt of the 10 Day Notice.

### Analysis

**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 February 2, 2010, and the effective date of the notice is February 12, 2011, 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 grant the Landlord an Order of Possession.

**Monetary Order** – The evidence supports that rent is payable on the last day of each month in the amount of \$500.00 however the Landlord has indicated the rent due for February 2011 was due on February 1, 2011 in the amount of \$520.00. In the presence of this contradictory information pertaining to the amount owed and the date it was due, I find the Landlord's request for a monetary order does not meet the requirements of the Direct Request Process and is therefore dismissed with leave to reapply.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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.

I HEREBY DISMISS the Landlord's request for a Monetary Order, 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: February 14, 2011.

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Residential Tenancy Branch