



# 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 8, 2011, at 4:10 the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit. The Tenant signed acknowledging receipt of the Notice of Direct Request Proceeding in the presence of a witness.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order 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 the parties on July 30, 2010 for a fixed term tenancy agreement effective August 1, 2010 and switching to a month to month tenancy after August 1, 2012, for the monthly rent of \$600.00 due on 1st of the month and a security deposit of \$300.00 and a pet deposit of \$300.00 were paid on August 1, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2010 (written as seen on document) with an effective vacancy date of February 12, 2011 due to \$600.00 in unpaid rent; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Utilities which was issued on, February 2, 2011 without an effective vacancy date listed due to \$433.89 in unpaid utilities; and
- A demand letter dated January 2, 2011 requesting payment for the \$396.52 hydro bill for which the Tenant was given a copy of the bill on December 15, 2010 plus \$37.37 for the natural gas bill for which the Tenant was given a copy of the bill on December 27, 2010; and
- A notation that the Tenant has since paid the January 2011 rent and the utilities remain unpaid.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent and Unpaid Utilities by leaving it personally with the Mother of the occupant who resides at the rental unit, in the presence of a witness.

#### Analysis

Section 46 (6) of the Act provides that if the tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end tenancy under section 46 of the Act.

Section 53(1) of the Act provides that if a landlord gives a notice to end tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with the Act. Therefore the 10 Day Notice to End Tenancy for unpaid utilities is automatically corrected to show an effective date of February 12, 2011.

**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, 2011, 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 utilities owed in full within the 5 days granted under section 46 (4) of the Act and that this constitutes unpaid rent as per section 46(6) as listed above.

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 the Tenant has failed to pay the utilities in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order in the amount of **\$433.89**.

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 FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$433.89**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: February 14, 2011.

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Residential Tenancy Branch