



# Dispute Resolution Services

Page: 1

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 *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 10, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a Canada Post receipt and tracking number as evidence of service to each of the 3 tenants named as respondents. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on September 1, 2010, indicating a monthly rent of \$1,250.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 6, 2011, with a stated effective vacancy date of February 19, 2011, for \$3,750.00 in unpaid rent since November, 2010.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on February 6, 2011, at 10:41 a.m. with a friend present as a witness. The Act deems the tenants were served on February 9, 2011.

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 from the date of service.

The application indicated that the tenants have not paid rent for November and December 2010, and January, 2011; totaling \$3,750.00; the same amount indicated on the 10 day Notice. The Notice ending tenancy indicated that only a partial February, 2011, rent payment was made, yet the amount of compensation claimed totals \$1,250.00 per month for each of November, December 2010; and January, 2011.

### Analysis

I find that the tenants were served with the Notice ending tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on February 9, 2011.

I accept the evidence before me that the tenants have failed to pay the November, December, 2010; January, 2011; 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; February 19, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary order in the sum of \$3,750.00 for November 2010, to January, 2011, inclusive, rent owed.

### Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$3,750.00 for November 2010, to January, 2011, inclusive, rent owed and I grant an Order in that amount. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: March 23, 2011.

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Residential Tenancy Branch