



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION AND REASONS**

### 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 19, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail sent to the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act the tenant is deemed to have been served on the fifth day after the documents were sent.

Based on the written submissions of the Landlord, I find the tenant has been duly served 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 a Monetary Order for unpaid rent pursuant to sections 55, and 67 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- Proof of Service of the Notice of Direct Proceeding,
- Copy of a residential tenancy agreement signed by the parties, on May 14, 2005 with monthly rent of \$1,000.00 and deposit of \$500.00 paid.
- Copy of Notice of rent increase
- Copy of 10 Day Notice to End Tenancy for Unpaid Rent issued on February 2, 2011 with effective date of February 12, 2011 due to \$1,345.00 in unpaid rent.

No tenant ledger was submitted. However the application filed by the landlord indicated

that the amount of the claim for rental arrears was \$1,090.00 with no additional arrears detailed. The Proof of Service form indicated that the Ten-Day Notice for Unpaid Rent was served to the tenant in person on February 2, 2011. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

### Analysis

I have reviewed all documentary evidence and accept that the tenant had been served with Notice To End Tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on February 2, 2011. I accept the evidence before me that the tenants have failed to pay rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the facts, 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.

However, I find that the amount of arrears shown on the Ten Day Notice to End Tenancy for Unpaid Rent is different than the amount shown as arrears on the application and there is no explanation with respect to whether or not the tenant had paid an amount towards the \$1,345.00 arrears shown on the Notice and if so, whether this payment was made for "use and occupation only".

Due to the landlord's failure to provide a ledger or an explanation, I find that it is not possible to accurately determine what these arrears pertain to for the purpose of issuing a monetary order. Therefore I find that the landlord's monetary claim must be dismissed.

### Conclusion

I hereby grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The portion of the landlord's claim requesting a monetary order for rental arrears is dismissed without leave.

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, 2011.

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Residential Tenancy Branch