



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** OPR, MNR

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated March 4, 2011 and effective March 14, 2011 which was served in person to the tenant on March 4, 2011.

Despite being served in person on March 14, 2011, neither co-tenant appeared.

At the outset of the hearing, the landlord advised that the tenant had paid the outstanding arrears beyond the five-day deadline for cancelling the Notice on March 19, 2011. The landlord testified that the tenant's understanding that this payment did not reinstate the tenancy was verbally confirmed.

### **Issue(s) to be Decided**

The remaining issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent, copies of cheques that failed to clear and a copy of the tenancy agreement.

The landlord testified that the tenant failed to pay rent owed for March 2011 properly due on February 28, 2011 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant did not pay the arrears within the 5-day deadline and did not vacate the unit. The landlord is seeking an order of possession.

### **Analysis**

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 46 of the Act states that a landlord may end a

tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. The Act provides that, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and did not pay the rent within 5 days nor did the tenant dispute the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective 2 days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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: April 01, 2011.

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Residential Tenancy Branch