



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR, MNR

### Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 6, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via posting on the door.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the 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 to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

### Background and Evidence

The landlord submitted the following evidentiary material:

- 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 March 28, 2011, indicating a monthly rent of \$990.00 due on the “30” day of the month, beginning April 1, 2011; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 14, 2011, via posting on the door, with a stated effective vacancy date of May 26, 2011, alleging \$1,025.00 in unpaid rent. Under the Act, the Notice self corrects to May 27, 2011, for an effective vacancy date.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. I have no evidence before me that the tenant either paid the rent in full or applied to dispute the Notice to End Tenancy within five days from the date of service.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a notice to end tenancy as declared by the landlord.

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on May 14, 2011 and states "you have failed to pay rent in the amount of \$1,025.00 that was due on May 9, 2011. " The Application explains that the tenancy started on April 1, 2011, that the Tenant paid \$1,450.00 total and that \$35.00 was left owing for April and the full rent of \$990.00 for May.

Under the tenancy agreement, as rent for April and May totaled \$1,980.00, the amount of unpaid rent could be listed at no higher than \$530.00 (\$1,980.00-\$1,450.00 payment). Therefore, it appears the landlord is also attempting to collect a portion of the security deposit, which is not rent.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

I find that the 10 Day Notice issued by the landlord does not meet the requirements of the *Act* as the only amount of rent the tenant could owe under the tenancy agreement or any documents submitted by the landlord, after deducting the payment of \$1,450.00, was \$530.00. Therefore the Notice is not enforceable as the rent listed as being due is invalid. The Notice is not used for the purpose of collecting a security deposit.

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby dismiss the landlord's application without leave to reapply.

Conclusion

**I HEREBY ORDER** that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated May 14, 2011, is without force or effect.

**I HEREBY DISMISS** the landlord's application, without leave to reapply.

The landlord is at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent to the tenant, with a request for a conference call hearing for the purpose of proving that the tenant was obligated to pay additional rent other than the amount listed in their evidence.

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: June 17, 2011.

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Residential Tenancy Branch