



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 May 24, 2011 the Landlord served both Tenants with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that a package was mailed to the male Tenant at the rental unit. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the Act stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is May 29, 2011.

The Landlord submitted no evidence to corroborate that documents were mailed to the female Tenant.

Section 89(1) of the *Residential Tenancy Act (Act)* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the *Act*. In this case the Landlord has only established that the male Tenant has been served in accordance with section 89(1) of the *Act*. As I have insufficient evidence to conclude that the female Tenant has been properly served the Application for Dispute Resolution as required by section 89(1) of the *Act*, I dismiss the Landlord's application for a monetary Order naming both Tenants, with leave to reapply.

The Landlord has applied for an Order of Possession which requires that the Landlord serve each respondent as set out under section 89(2) of the *Act*. Section 89(2) of the *Act* determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the Tenants' residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement and I have no evidence to show that either Tenant is a minor, I am making the rebuttable presumption that the female Tenant has been served in

accordance with section 89(2)(c) of the *Act*, and I will consider the Landlord's application for an Order of Possession.

### Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession for Unpaid Rent, pursuant to section 55 of the *Act*.

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding.
- A copy of a residential tenancy agreement which appears to be signed by both Tenants that indicates that the tenancy began on December 01, 2010 and that the rent of \$870.00 is due on the 31<sup>st</sup> day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord and is dated May 03, 2011, which declares that the Tenants must vacate the rental unit by May 13, 2011 as they have failed to pay rent that was due on April 30, 2011. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of an unsigned Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that he posted the Notice on the door of the rental unit on May 03, 2011, in the presence of a tenant, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served to a person over the age of nineteen on May 03, 2011.

In the Application for Dispute Resolution, the Landlord declared that the Tenants did not pay rent and parking fees of \$650.00.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$870.00 on the 31<sup>st</sup> day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants had not paid all of the rent for May of 2011 by the time

the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed.

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 has the burden of proving that the Tenant was served with the 10 Day Notice to End Tenancy. On the Application for Dispute Resolution the Landlord has declared that the 10 Day Notice to End Tenancy was personally served to a person over the age of nineteen and in the Proof of Service of the 10 Day Notice to End Tenancy, the Landlord declared that he posted the Notice on the door of the rental unit on May 03, 2011. In light of this contradictory evidence, I find that the Landlord has submitted insufficient evidence to establish how the Notice to End Tenancy was served.

In the absence of the evidence that causes me to conclude how the Notice to End Tenancy was served, I find that the Landlord has failed to establish that the Tenants were served with the Notice to End Tenancy.

### Conclusion

As the Landlord has submitted insufficient evidence to establish that the Tenants were served with the Notice to End Tenancy, I dismiss the Landlord's application for an Order of Possession, with leave to reapply.

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 06, 2011.

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Residential Tenancy Branch