



# 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 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 June 6, 2011, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- 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 all parties on April 17, 2009, for a fixed term tenancy effective May 1, 2009 that was set to expire on April 30, 2010. The monthly rent of \$1,375.00 is due on first day of the month and a deposit of \$687.50 was paid on April 4, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, May 11, 2011 with an effective vacancy date of May 21, 2011, due to \$1,425.00 in unpaid rent.
- A copy of a tenant ledger that indicates the total amount of rent due as of May 10, 2011 was \$1,375.00 and a \$25.00 charge for returned check charge plus \$25.00 late payment fee were added to the Tenant's account bringing the combined balance to \$1,425.00.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid when it was posted to the Tenant's door on May 11, 2011 at 12:08 p.m. in the presence of a witness.

### Analysis

**Order of Possession** - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on May 14, 2011, three days after it was posted to the door, and the effective date of the notice is May 24, 2011, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, 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 and I hereby grant the Landlord an Order of Possession.

**Monetary Order** – The evidence supports that the Tenant has failed to pay the May 1, 2011 rent in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order unpaid rent of **\$1,375.00**.

The balance of \$50.00 claimed by the Landlord pertains to fees for returned checks and late payment charges which are not rent and therefore cannot be awarded through a direct request process under section 55(4) of the *Act*. Therefore I dismiss the balance of the Landlord's claim with leave to reapply.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,375.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: June 20, 2011.

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Residential Tenancy Branch