



# 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 August 18, 2011, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. The Landlord submitted Canada Post receipts for a package that was sent to the Tenant via "XPost Reg Leg" along with a copy of the Canada Post tracking which indicates the package was successfully delivered 2001/08/18.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

### 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; and
- Canada Post "X-Post" receipts and tracking status of the delivery; and
- A copy of a residential tenancy agreement which was signed by the Landlords and the Tenant on February 16, 2011, for a month to month tenancy that began February 16, 2011 for the monthly rent of \$1,000.00 due on 1st of the month with a security deposit to be paid of \$500.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 4, 2011, with an effective vacancy date of August 14, 2011 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenant's door on August 4, 2011 at 12:00 p.m.

### Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution either in person or by registered mail to an address where the Tenant reside, in accordance with section 89 (1) of the Act.

In this case the Landlord served the Notice of Direct Request to the Tenant via Xpost, which is a service that does not require a signature. Although there is evidence it s was delivered to the Tenant's address, there is no evidence before me to support it was delivered to the Tenant. Section 89(2)(d) provides that if the notice of direct request application was served to an adult who appears to reside at the unit or by leaving it at a conspicuous place at the address such as the mail box, then service is met only for the request of an Order of Possession.

Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply, and the following decision will only consider the Landlord's request for an Order of Possession.

**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 August 7, 2011, three days after it was posted to the door, and the effective date of the notice is August 17, 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 approve the Landlord's request for an Order of Possession.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

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: August 29, 2011.

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Residential Tenancy Branch