



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at 9 p.m. on October 12, 2011, the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit. The landlord provided a Canada Post receipt, tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the day of personal delivery.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

### 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 April 20, 2011, indicating a monthly rent of \$2,084.00 due on or before the first day of the month;

- A Notice of Rent Increase issued on March 1, 2011, effective June 1, 2011, raising rent from \$2,080.00 to \$2,130.00 per month;
- A March 1, 2011, letter to the tenant that was supplied with the Notice of Rent Increase, signed by the tenant agreeing to the rent increase effective June 1, 2011; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 3, 2011, with a stated effective vacancy date of October 13, 2011, for \$2,130.00 in unpaid October 2011, rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on October 3, 2011, at 8 a.m. with a witness present. The Act deems the tenant was served on October 6, 2011.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The landlord has claimed \$2,130.00 in unpaid October, 2011, rent.

### Analysis

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 indicated unpaid rent owed in the sum of \$2,130.00. The Notice of Rent Increase effective June 1, 2011, appears to include a typographical error as it indicates rent was \$2,080.00 per month vs. rent indicated on the tenancy agreement; \$2,084.00. However, the tenant signed a letter indicating she agreed to the increase in rent to \$1,230.00 effective June 1, 2011.

A rent increase, when agreed to by a tenant, must not take effect until 3 full months have passed; in this case, July 1, 2011. Rent was due on the first day of each month, the Notice of Rent Increase was given in March; on the date rent was due. Therefore, I find that the rent increase agreed to on March 1, 2011, was effective July 1, 2011. If the tenant paid the increase on June 1, 2011, she has then made a rent overpayment.

In the absence of evidence of payments made each month by the tenant, I find that the Notice ending tenancy cannot be relied upon; I am uncertain what amount of rent the tenant may owe; therefore, I find that the application is dismissed.

The landlord is at liberty to issue another Notice ending tenancy, with the correct amount of unpaid rent, and to submit another application should the tenant not pay the rent or dispute the Notice within 5 days.

I note that the tenancy agreement includes terms, such as those related to repairs and disbursement of the deposit; that may not be enforceable under the Act.

### Conclusion

The application is dismissed 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: October 14, 2011.

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Residential Tenancy Branch