



# 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 on October 14, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

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 March 23, 2011, indicating a monthly rent of \$1,650.00 due on the 31<sup>st</sup> day of the month;
- An October 4, 2011, note to the tenant regarding unpaid rent; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 4, 2011, with a stated effective vacancy date of October 17, 2011, for \$1,900.00 in unpaid September and October, 2011, rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay \$250.00 September, 2011, rent and \$1,650.00 October, 2011, rent owed and at 8 p.m. was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on October 4, 2011, at the rental unit, with a witness present. The Act deems the tenant was served on October 4, 2011. The proof of service indicated that the tenant had paid \$200.00 toward September rent arrears.

The Notice stated 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 the balance of October, 2011, rent owed, \$1,600.00.

### 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 is deemed to have been received by the tenant on October 4, 2011.

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. There is no evidence before me that the tenant has disputed the Notice.

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; October 17, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid October, 2011, rent in the sum of \$1,600.00.

### Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant, and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$1,600.00 October, 2011, rent owed and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: October 20, 2011.

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Residential Tenancy Branch