



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding; that declared that on October 8, 2011, the landlord personally served the tenant with the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord, I find that the tenants have been duly 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 a monetary order for unpaid rent and if so, in what amount?

### Background and Evidence

The landlord submitted the following documents:

- A copy of the Proofs 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 February 9, 2011, providing for a monthly rent of \$520.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 3, 2011 with a stated effective vacancy date of July 12, 2011, for \$620.00 in unpaid rent.

The tenant acknowledged personal service of the 10 day Notice to End Tenancy on July 3, 2011

The landlord did not submit any ledgers or receipts to document rent payments received from the tenant. The application for dispute resolution was filed on October 7, 2011, three months after the Notice to End Tenancy. In the application the landlord requested an order for possession and claimed payment of the amount of \$145.00. In the details of dispute he said: "rec'd \$375.00 balance owing = \$145.00".

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

### Analysis and conclusion

The landlord waited three months after serving the Notice to End Tenancy to file his application for dispute resolution. He did not provide any documents to show what rent payments have been made in the intervening period. Since he has claimed only \$145.00 I must assume that the tenant has made some monthly rent payments over the past three months. Such payments would normally be applied firstly to arrears and secondly to current rent. In the absence of any records or receipts I am unable to determine whether or not the tenancy was reinstated by the acceptance of rent payments after July. In the absence of evidence to satisfy me on a balance of probabilities that the three month old Notice to End Tenancy is still valid, I dismiss the landlord's application for an order for possession without leave to reapply. If there is currently unpaid rent due to the landlord he will have to serve a new 10 day Notice to End Tenancy for unpaid rent. The landlord's application for a monetary order 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