



# 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 (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 27, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 14, 2010 for a 6 month fixed term tenancy beginning on July 1, 2010 that converted to a month to month tenancy on January 1, 2011 for the monthly rent of \$1785.00 due on the 1<sup>st</sup> of each month and a security deposit of \$875.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 22, 2011 with an effective vacancy date of October 1, 2011 due to \$1,785.00 in unpaid rent.

In the Application filed the landlord indicates the tenant failed to pay the full rent owed for September 2011, however the 10 Day Notice indicates the tenant failed to pay the full rent for the month of October, 2011 and that the tenant was served the 10 Day

Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 22, 2011 at 4:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### 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 September 25, 2011.

However, as the 10 Day Notice to End Tenancy for Unpaid Rent indicates the tenant failed to pay rent in the amount of \$1,785.00 that was due on October 1, 2011 and since the 10 Day Notice was issued on September 22, 2011, I find the notice was issued before rent was due on October 1, 2011.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, as the landlord issued the 10 Day Notice prior to the day rent was due, I find the 10 Day Notice to End Tenancy for Unpaid Rent on September 22, 2011 to be invalid and not enforceable.

As the landlord failed to provide any other evidence, such as a tenant account ledger, I find the landlord has failed to establish that the tenant owed any money for rent that was due on October 1, 2011.

### Conclusion

For the reasons above, I dismiss the landlord's Application in its entirety.

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: November 01, 2011.

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Residential Tenancy Branch