



# 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 3 p.m., with a witness present; on November 14, 2011, the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit. 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 tenants have 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 and pet deposit?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 25, 2011, indicating a monthly rent of \$725.00 due on the 1<sup>st</sup> day of the month;
- A condition inspection report; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 4, 2011, with a stated effective vacancy date of November 13, 2011, for \$725.00 in unpaid November, 2011, rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on November 4, 2011, at 2 p.m. with a friend present as a witness. The Act deems the tenants were served on November 7, 2011.

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

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord.

The notice is deemed to have been received by the tenants on November 5, 2011.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to November 15, 2011.

I accept the evidence before me that the tenants have failed to pay the November, 2011, rent owed in full within the 5 days granted under section 46 (4) of the *Act*. There is no evidence before me that the tenants disputed the Notice.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; November 15, 2011.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid November, 2011, rent in the sum of \$725.00.

Payment of a pet deposit is not rent and as such is not considered as part of a Notice ending tenancy for unpaid rent; but a 1 Month Notice ending tenancy for cause. If the tenancy ends, a pet deposit is no longer required.

### 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 tenants 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 \$725.00 November, 2011, rent owed and I grant an Order in that amount.

This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

As the tenancy is ending payment of a pet deposit is not required and cannot be claimed.

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 15, 2011.

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Residential Tenancy Branch