



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### 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.

The Landlord submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 2011, the Landlord served each of the Tenants with the Notice of Direct Request Proceeding by registered mail. The Landlord provided the tracking numbers and customer receipts for each with the proof of service document.

Section 90 of the Act determines that a document served in this manner is deemed to have been served in five days.

Based on the written submissions of the Landlord, I find that the Tenants have been duly served with the Direct Request Proceedings documents.

### Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an order of possession.

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 14, 2011, indicating a monthly rent of \$800.00 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 November 03, 2011 with a stated effective vacancy date of November 13, 2011, for \$800.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants had failed to pay rent owed within the time frame of five days as set out in the Notice. The 10 Day Notice to End Tenancy for Unpaid Rent was served by posting it on the Tenants' door on November 03, 2011 at 1:30 P.M. The Landlord provided evidence that this was witnessed by a third party. A Notice served in this manner is deemed to have been served by November 06, 2011, which is three days from the date posted.

The Notice states that the Tenants had five days to pay the full amount of the outstanding rent, 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. The deadline to do so was November 11, 2011. Although the Landlord indicated that the Tenants had until November 13, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to November 16, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Landlord's Application states that the Tenants finally paid the outstanding amount on November 21, 2011, however the Landlord is not willing to continue the tenancy and is seeking an order of possession.

### Analysis

I have reviewed all documentary evidence and accept that the Tenants have been served with the 10 Day Notice to End Tenancy as declared by the Landlord.

I accept the evidence before me that the Tenants have failed to pay the rent owed within the 5 days granted under section 46 (4) of the *Act*.

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 November 16, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

### Conclusion

I find that the Landlord is entitled to an Order of Possession effective **two days after service** on the Tenants. The order must be served on the Tenants and may be filed in the Supreme Court.

The order accompanies the Landlord's copy of this decision.

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 28, 2011.

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Residential Tenancy Branch