



# 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 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 12, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding by way of posting on the door of the rental unit. Section 90 of the Act determines that a document is deemed to have been served on the 3<sup>rd</sup> day after posting.

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 the requested orders?

### 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 1, 2011, 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 October 3, 2011, with a stated effective vacancy date of October 14, 2011, for \$810.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the tenant's door on October 3, 2011 at 12:30 p.m. with another person present as a witness. The Act deems the tenant was served on October 6, 2011.

The Notice states 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.

### 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 6, 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 October 16, 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 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 16, 2011. Therefore, I find that the landlord is entitled to an order of possession.

The landlord is not entitled to a monetary order however, because the Notice of Direct Request Proceeding was posted to the door of the rental unit and this method of service is not a valid way of serving the hearing documents.

### Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I dismiss the landlord's request for a monetary order.

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*.