



# 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 December 22, 2011, the Landlord's Agent served Tenant RH in person with the Notice of Direct Request Proceeding. The Landlord provided a signed proof of service from the Agent who performed the service on Tenant RH.

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

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

### Preliminary Matter(s)

The Landlord referenced a previous hearing decision in his written submissions in relation to an Application previously made by the Tenants for compensation. The previous hearing decision of December 12, 2011, indicates that the Tenants moved into the rental unit on October 20, 2011 and that the rent was to be \$1150.00 per month. The Tenants failed to pay any rent and a Notice to End Tenancy was issued in December 2011. The Tenants' claims for compensation were dismissed in the decision of December 12, 2011. The Tenants made no application to cancel the Notice to End Tenancy, rather the decision of December 12, 2011 states that the Tenants stated at the hearing that they had found new accommodation and would be leaving the rental unit in December 2011. The December 12, 2011 decision made no decision regarding ending the tenancy or with regards to an order of possession. The Landlord submitted an Application for Direct Request on December 20, 2011 seeking an order of possession as the Tenants did not pay rent or move out in accordance with the Notice to End Tenancy.

Although there are three individuals named on the tenancy agreement, the Landlord has only provided proof of service of the Application for Direct Request on Tenant RH. As the Landlord is only requesting an order of possession, I find it is appropriate to proceed as the Landlord has proven service of the Application on at least one of the Tenants, and I note that Tenant RH was a party to the prior hearing of December 12, 2011.

### 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 on the Tenant RH;
- A copy of a residential tenancy agreement and a copy of the signatory page of a residential tenancy agreement signed by the parties. The tenancy agreement indicates a monthly rent of \$1150.00 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 December 02, 2011 with a stated effective vacancy date of December 12, 2011, for \$1150.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants 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 placing it in the mail box of the rental unit on December 02, 2011 at 12 noon. 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 December 05, 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 December 10, 2011. Although the Landlord indicated that the Tenants had until December 12, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to December 15, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Landlord's Application of December 20, 2011 states that the Tenants owe \$1150.00 in rent and the Landlord 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 December 15, 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 Tenant RH. The order must be served on Tenant RH and may be filed in the Supreme Court. The order requires Tenant RH and all occupants of the rental unit to vacate the premises.

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: January 04, 2012.

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Residential Tenancy Branch