



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding in which an agent for the Landlord declared that on January 23, 2012 the agent for Landlord personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit. Based on the written submissions of the Landlord, I find the Tenant has been properly served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*.

### Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant
- A copy of a residential tenancy agreement that appears to be signed by the Tenant, which indicates that the tenancy began on September 01, 2010 and that the rent of \$700.00 is due by the first day of the month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by an agent for the Landlord and is dated January 08, 2012, which declares that the Tenant must vacate the rental unit by January 22, 2012 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$700.00, that was due on January 01, 2012.

- A copy of Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the Agent for the Landlord posted the Notice on the Tenant's door on January 08, 2012, in the presence of a friend, who also signed the Proof of Service.

In the Application for Dispute Resolution, the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door on January 08, 2012.

In the Application for Dispute Resolution the Landlord has not applied to recover unpaid rent. Although the Landlord declares that it is seeking an Order of Possession for "non-payment of rent", it does not declare whether the rent for January has been paid, in part or in full.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement, in which the Tenant agreed to pay monthly rent of \$700.00 on the first day of each month.

Based on the evidence provided by the Landlord, specifically the Notice to End Tenancy, and in the absence of evidence to the contrary, I find that the Tenant had not paid rent when it was due on January 01, 2012.

Section 46 of the *Act* stipulates that a landlord may end a tenancy if rent is not paid when it is due by serving notice to end the tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on January 08, 2012.

Section 46(4) of the *Act* stipulates that a notice served pursuant to this section is of no effect if the tenant pays the overdue rent within five days of receiving the notice. I find that the Landlord has submitted insufficient evidence to establish whether or not the Tenant paid the overdue rent within five days of receiving the Notice to End Tenancy. In reaching this conclusion I was influenced by:

- The absence of a declaration on the Application for Dispute Resolution when and/or if rent was paid, in any amount, after January 01, 2012
- The absence of any documentary evidence which shows when and/or if rent was paid, in any amount, after January 01, 2012
- The fact that the Landlord has not made a claim to recover unpaid rent, which raises the possibility that the rent has been paid in full.

### Conclusion

As I have insufficient evidence to determine whether the Notice to End Tenancy has not been rendered ineffective, pursuant to section 46(4) of the *Act*, I dismiss the Landlord's application for an Order of Possession.

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 25, 2012.

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Residential Tenancy Branch