



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession based upon unpaid rent and for a monetary order for unpaid rent.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 14, 2012. The landlord also testified as to the tracking number for the registered mail envelope. The tenant did not appear at the hearing. The landlord successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession and a monetary order?

### Background and Evidence

There is no written tenancy agreement and the landlord could not supply the date the tenancy started. The landlord stated that the tenant moved into the rental unit in December, 2011, monthly rent was \$1,200.00 plus utilities and he collected a security deposit and pet damage deposit of \$600.00 each.

The landlord submitted that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on February 2, 2012, by posting on the door. The landlord testified that the Notice stated the amount of unpaid rent as of February 2, 2012, was \$1,300.00. The effective listed vacancy date was February 2, 2012.

The landlord's only evidentiary submission was a 10 Day Notice to End Tenancy for Unpaid Rent which appeared to be an original document.

As the Notice listed February 13, 2012, as the date the landlord signed the Notice, I questioned the landlord further. Upon query the landlord stated that he did not keep a copy of the Notice he served upon the tenant. The landlord confirmed that when he

filed his application, he obtained a form copy of the Notice at the Residential Tenancy Branch and filled it in to accompany his application.

I further note that the landlord provided no accounting records showing payments by the tenants or other documentary evidence in support of his claim that the tenant was deficient in rent.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the *Act*. Without reviewing a copy of the Notice to End Tenancy that the landlord served on the tenant, I cannot conclude that the Notice is effective and therefore enforceable.

I therefore find that the landlord had insufficient evidence to show the tenant was issued a valid 10 Day Notice to End Tenancy for Unpaid Rent complying with the Residential Tenancy Act.

I also could not determine that the tenant was obligated to pay monthly rent as the landlord failed to provide sufficient evidence of a tenancy agreement or previous payments made by the tenant.

### Conclusion

Therefore, I find the 10 Day Notice to End Tenancy issued by the landlord, is invalid and of no force or effect and I hereby **dismiss** the landlord's application, with the effect that this tenancy continue until it otherwise ends under the Act.

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: February 28, 2012.

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Residential Tenancy Branch