



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR, MNR

### 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 landlords for an Order of Possession and a monetary order for unpaid rent and utilities.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 10, 2012, the landlords served the tenants with the Notice of Direct Request Proceeding via registered mail, a Canada post tracking number was provided as evidence of service.

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

Based on the written submissions of the landlords, I find that the tenants have been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 28, 2009, indicating a monthly rent of \$1,950.00 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 February 4, 2012, with a stated effective vacancy date of February 14, 2012, for \$1,050.00 in unpaid rent and \$248.22 in unpaid utilities.

Documentary evidence filed by the landlords indicates that the tenants had failed to pay all rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery, which the male tenant personally signed the acknowledgement on the proof of service document.

The Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants have been served with notice to end tenancy as declared by the landlords.

I accept the evidence before me that the tenants have failed to pay all the rent owed in full 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 the effective date of the Notice. Therefore, I find that the landlords are entitled to an Order of possession and a monetary Order for unpaid rent.

However, I find the landlords have not provided sufficient evidence for a monetary order for unpaid utilities as required by Section 46(6) of the *Act*.

### **Landlord's notice: non-payment of rent**

**46** (6) (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section

There was no documentary evidence to show the landlords gave the tenants written demand to pay the utility charges and that more than 30 days has passed. Further, the landlords did not file a copy of the utility bill. Therefore, I dismiss the landlord's application for a monetary order for unpaid utilities with leave to reapply.

### Conclusion

I find that the landlords are entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlords are entitled to monetary compensation pursuant section 67 in the amount of **\$1050.00** comprised of rent owed.

I dismiss the landlord's application for a monetary order for unpaid utilities with leave to reapply.

This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 16, 2012.

---

Residential Tenancy Branch