



# 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*, and dealt with an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 15, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the *Act* provides that a document is deemed to have been served 5 days after mailing. Based on the written submissions of the landlord, I find that the tenant has been served with the Notice of Direct Request Proceeding requesting an Order of Possession and a monetary order.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 19, 2010, for rent in the amount of \$1,000.00 per month payable on the 1<sup>st</sup> day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on February 7, 2012 with an effective date of vacancy of February 17, 2012, due to \$3,350.00 in unpaid rent that was due on February 1, 2012. Both pages of the 2-page form have been provided;

- A copy of a Proof of Service for the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenant was served with the notice on February 7, 2012 personally upon a person who is not the tenant, at the rental unit;
- The Landlord's Application for Dispute Resolution dated February 15, 2012 which states that the tenant has not paid the full amount of rental arrears that have accumulated to \$3,350.00, and after service of the Notice to end Tenancy for Unpaid Rent or Utilities, the tenant paid the landlord \$500.00, leaving a new balance outstanding of \$2,850.00.

The landlord has not provided any information of which months the tenant failed to pay rent, nor whether or not the person served with the 10 Day Notice for Unpaid Rent or Utilities apparently resides with the tenant. The tenancy agreement provided by the landlord states that there will be 2 adults and 2 children occupying the rental unit, but the only names that appear on that document are the landlord and one tenant.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord. The landlord's Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenant was served personally, however it also states that another person was served, and the first name only of that person is recorded on the Proof of Service Document. The document also states that it was served at the address of the rental unit on February 7, 2012. The *Residential Tenancy Act* permits a person who apparently resides with the tenant to be served with such a notice, however I have no evidence before me that the person served apparently resides with the tenant.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy in one of the ways permitted under the *Residential Tenancy Act*, and I find that the landlord has failed to establish that the tenant was served accordingly.

Conclusion

Having found that the landlord has failed to prove service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I have determined that this application be dismissed with leave to reapply.

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 21, 2012.

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Residential Tenancy Branch