



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DIRECT REQUEST DECISION**

### Dispute Codes :

OPR, MNR

### Introduction

The Hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 1, 2012, at 7:40 p.m., the landlord served each tenant in person with the Notice of Direct Request.

Based on the written submissions of the landlord, I find the tenant has been duly 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 and a monetary Order for rental arrears pursuant to 55 and 67 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

### Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent that indicated the tenant was \$1,400.00 in arrears for rent. In the space on the Ten Day Notice for reserved for utility claims, no amount was shown as being owed.

The landlord also included a "Proof of Service" form stating that the Notice was served to the tenant in person on January 23, 2012 at 7:45 p.m., acknowledged by the tenant's signature.

The purpose of serving documents under the Act is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

### Analysis

Submitted into evidence was a copy of the tenancy agreement signed on July 6, 2011 showing rent set at \$1,350.00 per month. Utilities were not included in the rent and a notation above the line for rent appeared to indicate that the tenant would have to pay 50% of the utilities.

In the Application for Direct Request the landlord indicated that the tenant was in arrears for \$1,350.00 rent for the month of January 2012. However, the Ten Day Notice to End Tenancy for Unpaid Rent indicated that the arrears for rent were \$1,400.00 and I find that nothing was indicated on the Ten Day Notice to End Tenancy form with respect to the \$50.00 portion that was apparently allocated to a debt for utilities.

Section 46, (6) states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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 a Ten-Day Notice based on utilities owed.

I find that this written demand from the landlord for payment of utilities would need to occur 30 days prior to issuing the Ten Day Notice to End Tenancy for any outstanding utilities. While I do not find that the landlord's error in merging the utilities and rent would completely invalidate the Ten Day Notice to End Tenancy for Unpaid Rent, I find that the inclusion of utilities in the rent portion of the claim has affected my ability to determine the monetary portion of the landlord's application.

An application under section 55(4) only pertains to an Order of Possession and rent owed, and does not permit a monetary order for other damages or debts, such as utility charges owed. I find that, because of the discrepancy between the amount shown on the Ten Day Notice to End Tenancy and the amount sought in the landlord's Application for a Direct Request proceeding, the monetary portion of the application must be dismissed.

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts, I find that the landlord is entitled to an Order of Possession.

**Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the landlord's application is dismissed without leave.  
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 06, 2012.

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Residential Tenancy Branch