



# 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* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding upon each of the Tenants which declares that on March 22, 2012, at 3:37 p.m., the Landlord's agent served each of the Tenants with the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided copies of the registered mail receipts and tracking numbers for each of the registered documents.

Based on the written submissions of the Landlord, I find that the Tenants have been duly served with the Direct Request Proceeding documents pursuant to the provisions of Section 89(1)(c) of the Act.

### **Issue(s) to be Decided**

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each of the Tenants;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the parties on November 30, 2011, indicating a monthly rent of \$750.00 due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the Landlord issued on February 5, 2012, with a stated effective vacancy date of February 15, 2012, for \$374.50 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants have failed to pay 374.50 owed for February, 2012, and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenants' door at the rental unit on February 5, 2012, at 11:15 a.m. A Witness signed the Proof of Service document.

The Notice states that the Tenants had five days to pay the rent 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 were served with notice to end the tenancy by posting the document to the Tenants' door on February 5, 2012, as declared by the Landlord. Service in this manner is deemed to be effected 3 days after posting the Notice, February 8, 2012.

Section 53(1) of the Act provides that an incorrect end of tenancy date on the Notice to End Tenancy is deemed to be changed in accordance with the provisions 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 February 28, 2012. Therefore, I find that the Landlord is entitled to an Order of Possession.

The tenancy agreement has a different spelling for the male Tenant's name than the Landlord's Application for Dispute Resolution and the remainder of the Landlord's documentary evidence. The Direct Proceeding process is held by way of written evidence only and therefore there is no ability to question the Landlord with respect to its application. Therefore, I hereby provide the Landlord an Order of Possession against the female Tenant only (and any guest or other person occupying the rental unit).

As it is not known whether the Landlord wishes to proceed against one or both of the Tenants with respect to its application for a Monetary Order, I dismiss this portion of the Landlord's application **with leave to reapply**.

### **Conclusion**

The Landlord's application for a Monetary Order is **dismissed with leave to reapply**.

I hereby provide the Landlord an Order of Possession effective against the female Tenant, effective **two days after service** on the female Tenant. This Order may be filed in the Supreme Court 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: March 28, 2012.

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Residential Tenancy Branch