



# 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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on April 12, 2012, the Landlord's agent served each of the Tenants with the Notice of Direct Request Proceeding by registered mail sent to the rental unit. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence.

Based on the written submissions of the Landlord, I find that both of the Tenants have been served with the Direct Request Proceeding documents. Service in this manner is deemed to be effected 5 days after mailing the documents.

### **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 December 7, 2011, indicating a monthly rent of \$1,365.00 due on the first day of

the month. There are additional monthly fees for parking (\$25.00) and a locker (\$35.00);

- A copy of a Statement of Account indicating that the Tenants paid a total of \$1,190.00 for March, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which the Landlord issued on April 2, 2012, with a stated effective vacancy date of April 12, 2012, for \$1,660.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants have failed to pay the full rent owed for March and April, 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 April 2, 2012, at 11:35 a.m. with a witness present.

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, as declared by the Landlord. Service in this manner is deemed to be effected three days after posting the document to the Tenants' door, April 5, 2012.

I accept the evidence before me that the Tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. The Tenant has not filed an Application for Dispute Resolution disputing the Notice to End Tenancy

Section 53 of the *Act* provides that an incorrect effective date on a notice to end the tenancy is deemed to be changed to the date that complies with the required notice period. Therefore, I find that the effective date of the Notice to End Tenancy is April 15, 2012. 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 April 15, 2012. The Tenants are overholding and I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord did not provide sufficient evidence to support its application for a Monetary Order for unpaid **rent** in the amount of \$1,660.00. In the Direct Request Process, the Landlord can only apply for a Monetary Order for unpaid rent. The fees for parking and the locker are not considered to be rent.

I accept the Landlord's written submission that the Tenants owe \$235.00 in unpaid rent for March, 2012 (and that the monies paid in March included payment of the parking and locker fees). Therefore, I find that the Landlord has proven its monetary claim for

unpaid rent in the amount of \$1,600.00 only (\$235.00 + \$1,365.00) and provide a Monetary Order in that amount.

### **Conclusion**

I find, pursuant to the provisions of Section 55 of the Act, that the Landlord is entitled to an Order of Possession effective **two days after service** on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord is entitled to monetary compensation pursuant to the provisions of Section 67 in the amount of **\$1,600.00** rent owed and I provide an Order in that amount. This Order must be served on the Tenant 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: April 18, 2012.

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Residential Tenancy Branch