



# Dispute Resolution Services

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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 landlord for an order of possession and a monetary order for unpaid rent.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on May 23, 2012, the landlord served the tenant with the notice of direct request proceeding via registered mail.

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 landlord, I find that the tenant has been duly served with the 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 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 landlord submitted the following evidentiary material:

- A copy of the proof of service of the notice of direct proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on November 8, 2011, indicating a monthly rent of \$1,150.00 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 May 4, 2012, with a stated effective date of May 17, 2012, for \$1,170.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting on the door on May 4, 2012. Section 90 of the Act deems the tenant was served three days later on May 7, 2012, resulting in an effective date of May 17, 2012.

The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant 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 tenant has been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay 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 tenant is 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 landlord is entitled to an order of possession.

Regarding the monetary order, there is a discrepancy between the Residential Tenancy Agreement which indicates a monthly rent of \$1,150.00 and the amount of \$1,170.00 indicated by the landlord on the 10 day notice and in the application before me.

Although the discrepancy of \$20.00 could be related to a late charge as defined in #8 of the Residential Tenancy Agreement Addendum signed November 8, 2011, there is no evidence in either the 10 day notice or the Landlord's Application for Dispute Resolution which clarifies the discrepancy, and therefore, I dismiss the landlord's application for a monetary order with leave to reapply.

### Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenant and this order may be filed in the Supreme Court and enforced as an order of that court.

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

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 28, 2012.

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Residential Tenancy Branch