



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR and MNR

### Introduction

This hearing was conducted as a 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 which declares that the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail sent on June 19, 2012, deemed to have been received on June 24, 2012.

Based on the written submission of the landlord, I find that the tenants have been 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 a Monetary Order for the 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 the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on December 14, 2011 at monthly rent of \$1,550 due on the first day of the month. A security deposit of \$775 was paid at the beginning of the tenancy ;

- A copy of a 10 Day Notice to End Tenancy for unpaid rent which was served by posting on the tenant's door on June 5, 2012 with an end of tenancy date of June 15, 2012, which is corrected by statute to June 18, 2012 to account for the three days for deemed service of documents served by positing.

Documentary evidence, specifically the Notice to End Tenancy, filed by the landlord indicates that the tenants had failed to pay rent of \$1,207.21 due on June 1, 20 and utilities of \$542.39 for which written demand had been on May 31, 2012.

The Notice to End Tenancy 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.

The landlord had requested a monetary claim in this application for the total of the unpaid rent and utilities of \$1,750 comprised of the \$1,207.21 in rent and \$542.39 in utilities.

### Analysis

I have reviewed all documentary evidence and accept that the tenants were served with Notice to End Tenancy as declared by the landlord.

I accept the evidence before me that the tenant failed to pay the rent owed in full within the five days granted under section 46(4) 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 the effective date of the Notice which was June 18, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice to End Tenancy of May 7, 2012.

However, I find a degree of uncertainty with respect to the landlord's monetary claim.

The rental agreement sets rent at \$1,550 per month.

The Notice to End Tenancy claims \$1,207.61 in unpaid rent due on June 1, 2012 and \$542.39 in utilities for which written demand was made on May 31, 2012.

Section 46(6) of the *Act* provides that utilities may only treat unpaid utilities as unpaid rent 30 days after written demand for payment.

Therefore, when the Notice to End Tenancy was served on June 5, 2012 by posting and, at the time of the landlord's application of June 15, 2012, the 30 days had not yet passed.

In addition, I have no way of knowing for certain if the claimed rent portion of \$1,207.61 is a result of prepayment of rent by the tenants or application by the landlord of a portion of rent paid to utilities.

Therefore, I am dismissing the landlord's claim 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. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord's claim for a Monetary Order is 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: June 28, 2012.

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Residential Tenancy Branch