



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep the security and or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done on June 15, 2012 when the Landlord posted the documents to the Tenant's door, in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this hearing and I proceeded in the absence of the Tenant.

The Landlord and Landlord's Agent appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted into evidence a copy of the tenancy agreement, a copy of the 10 Day Notice to end tenancy for unpaid rent, and copies of proof of service documents.

The tenancy agreement supports that the Tenant entered into a fixed term tenancy agreement that began on April 1, 2011 and switched to a month to month tenancy after March 31, 2012. Rent was payable on the first of each month in the amount of \$425.00 and on or before April 1, 2011 the Tenant paid \$212.50 as the security deposit.

The Agent confirmed service of the 10 Day Notice on June 2, 2012 when she posted the Notice to the Tenant's door.

### Analysis

Section 89(1) of the Act stipulates how service of an application for dispute resolution and hearing documents **must** be given [emphasis added]. This speaks to service for all types of applications and does not provide for service by posting to a tenant's door.

Section 89(2) of the Act stipulates service requirements for applications seeking one of two specific orders: (1) a landlord's application for an Order of Possession, or (2) a landlord's application for an order ending a tenancy early. Section 89(2)(d) provides for service by attaching a copy of the application to a door or other conspicuous place at the address at which the tenant resides.

In this case the Landlords have applied for an Order of Possession and a Monetary Order; however service was conducted by posting the application and hearing documents to the Tenant's door. Therefore service was conducted in accordance with section 89(2)(d) of the Act and the Landlord can only seek an Order of Possession. Accordingly, I dismiss the Landlord's request for a Monetary Order, with leave to reapply, and I proceeded with their application for an Order of Possession.

I have reviewed all documentary evidence and accept that the Tenant has been served with the 10 Day Notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on June 5, 2012, three days after it was posted to the Tenant's door, and the effective date of the notice is June 15, 2012, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full and has not made application to dispute the Notice 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 and I hereby grant the Landlord an Order of Possession.

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

### Conclusion

I hereby dismiss the Landlord's monetary claim, with leave to reapply.

The Landlord has been awarded an Order of Possession effective two days upon service to the Tenant. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded **\$25.00** recovery of the filing fee. This one time award may be deducted off of the Tenant's security deposit currently held in trust by the Landlord.

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: July 09, 2012.

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Residential Tenancy Branch