



# 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 an *ex parte* 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 based on unpaid rent and utilities and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 24, 2012, the landlord sent the respondent the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number and the Customer Receipt to confirm this mailing.

Based on the written submissions of the landlord, I find that the respondent has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities pursuant to section 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 served to the respondent;
- A copy of one unsigned and undated page of a Residential Tenancy Agreement (the Agreement) indicating what would appear to be a monthly rent of \$850.00, due on the 1st day of each month after an initial payment due on October 15, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the respondent's door on September 12, 2012, with a stated effective vacancy date of September 22, 2012, for \$1,775.00 in unpaid rent and \$448.00 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the respondent failed to pay all outstanding rent and utilities was served by posting the 10 Day Notice on the respondent's door at 11:00 a.m. on September 12, 2012. In accordance with section 89 and 90 of the *Act*, the respondent was deemed served with this 10 Day Notice on September 15, 2012.

The Notice states that the respondent had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The respondent 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 respondent has been served with notice to end tenancy as declared by the landlord.

I should first note that the landlord's claim for both an eviction and a monetary order for unpaid utilities cannot be considered by way of an ex parte proceeding. In addition, the landlord has failed to provide sufficient evidence with respect to the alleged unpaid utilities. His only evidence with respect to the unpaid utilities were the figures he cited on the 10 Day Notice and the application for dispute resolution, neither of which are sufficient to obtain the outcome the landlord is seeking.

I find in general that the landlord's application for dispute resolution is unclear and lacks sufficient required information. The landlord did not provide a signed copy of the Agreement. The one page of the Agreement that the landlord did submit as evidence was unclear on a number of points. The spelling of the respondent's last name and the amount of monthly rent are not totally legible in the one page the landlord submitted. In addition, I find the Agreement confusing and inconsistent with the landlord's application for dispute resolution. In the Agreement, the initial fixed term tenancy was to last from October 15, 2010 until October 15, 2011. However, the Agreement also specified that the first full month's rent became due on October 15, 2010, but "all subsequent rent is due and payable on the first of each month." In the landlord's application for dispute resolution, the landlord appears to have requested unpaid rent of \$1,775.00 owing for September 2012, \$448.00 for utilities and \$850.00 in rent due on September 15. As the Agreement stated that rent becomes due on the first of each month, the landlord's claim for an additional \$850.00 is at odds with the terms of the partial Agreement submitted by the landlord. The landlord did not provide any tenant rent ledger, bills for utilities or receipts issued to the respondent to support the landlord's application for a monetary order.

Although I have given the landlord's application careful consideration, to determine if I can allow any part of the landlord's application, I find that the landlord has provided such incomplete information that I cannot consider any portion of the landlord's application. Based on the information provided by the landlord, I am not even satisfied that a tenancy agreement exists between the parties and, if so, whether the respondent as identified in the landlord's application is in fact the tenant. I dismiss the landlord's

application in its entirety with leave to reapply. Unless the landlord provides more complete information, I would suggest that the landlord pursue any future application relating to this tenancy by way of a participatory hearing where any incomplete information can be clarified rather than by way of a direct request proceeding.

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: October 03, 2012

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Residential Tenancy Branch