



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 on October 02, 2012 an agent for the Landlord served the Respondent with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is October 07, 2012.

Based on the written submissions of the Landlord, I find the Respondent has been served with the Dispute Resolution 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 55 and 67 of the *Act*.

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Respondent.
- A copy of a residential tenancy agreement between the Landlord and two tenants, neither of whom is the Respondent. I note that the Respondent is named as an occupant on this tenancy agreement.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and is dated September 10, 2012, which declares that

the Respondent must vacate the rental unit by September 20, 2012 as the Respondent has failed to pay rent in the amount of \$1,450.00 that was due on September 01, 2012. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy in which an agent for the Landlord declared that the agent posted the Notice on the door of the rental unit on September 10, in the presence of another party, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on September 10, 2012 and that the Tenant has not paid rent for September of 2012.

### Analysis

I find that the Landlord has failed to establish that the Respondent entered into a tenancy agreement with the Landlord. In reaching this conclusion I was heavily influenced by the fact that the Respondent is named on the tenancy agreement as an occupant, which means that he does not have any of the rights or obligations that accompany that agreement, including the obligation to pay rent.

As the Landlord has failed to establish that the Respondent was obligated to pay rent for this unit, I dismiss the Landlord's application for a monetary Order naming this Respondent, with leave to reapply for a monetary Order for unpaid rent if the Landlord has evidence to show that it has entered into a tenancy agreement with this individual.

As the Landlord has failed to establish that a Ten Day Notice to End Tenancy that names a Tenant of the rental unit was served to a Tenant in the rental unit, I dismiss the Landlord's application for an Order of Possession, with leave to reapply for an Order of Possession if the Landlord has evidence to show that it has entered into a tenancy agreement with the Respondent.

### Conclusion

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 10, 2012.

---

Residential Tenancy Branch