



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR, MNR

### **Introduction**

This matter was conducted 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 Landlords for an Order of Possession and a Monetary Order.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 10, 2012, the Landlord served the Tenant with the Notice of Direct Request Proceeding by handing the documents to the Tenant at the rental unit.

Based on the written submissions of the Landlords, I find that the Tenant has been served with the Direct Request Proceeding documents.

### **Issue(s) to be Decided**

Are the Landlords entitled to an Order of possession?

Are the Landlords entitled to monetary compensation for unpaid rent?

### **Background and Evidence**

The Landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the Landlord MD on July 31, 2012, and by the Tenant on August 16, 2012, indicating a monthly rent of \$700.00 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 November 2, 2012, with a stated effective vacancy date of November 11, 2012, for \$700.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord MD served the 10 Day Notice to End Tenancy for Unpaid Rent by handing the document to the Tenant on November 2, 2012, at 4:00 p.m. The Proof of Service document is signed by a witness.

The Notice states that the Tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. 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 was served with Notice to End Tenancy on November 2, 2012.

The Landlord MD is named in the tenancy agreement, but the Landlord PD is not. The Notice to End Tenancy was issued by the Landlord MD, and the proof of service documents identify the Landlord MD as the person who served the Notice of Direct Proceeding and the Notice to End Tenancy upon the Tenant. Therefore, I find insufficient evidence that the Landlord PD is a "landlord", and proceed with the Application with respect to the Landlord MD only.

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*.

Section 53 of the *Act* provides that an incorrect end of tenancy date on a Notice to End Tenancy is deemed to be changed to the date that complies with the applicable Section. 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 November 12, 2012.

Therefore, I find that the Landlord MD is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of **\$700.00**.

### **Conclusion**

Pursuant to the provisions of Section 55 of the *Act*, I hereby provide the Landlord MD an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the *Act*, I hereby provide the Landlord MD a Monetary Order in the amount of **\$700.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: November 15, 2012.

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Residential Tenancy Branch