



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded 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 landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on November 20, 2012, he handed both tenants the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord and in accordance with section 88 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on November 20, 2012.

### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent 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 Notices of Direct Proceeding served to both tenants;
- A copy of a residential tenancy agreement, which was signed by the landlord and both tenants on June 8, 2012. According to the tenancy agreement, monthly rent was set at \$1,300.00, payable in advance on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to Tenant KRC by the landlord on November 7, 2012, with a stated effective vacancy date of November 17, 2012, for \$3,842.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord stated that the 10 Day Notice was handed to Tenant KRC on November 7, 2012. In accordance with sections 88(a) and (e) of the *Act*, I find that both tenants were served with this 10 Day Notice on November 7, 2012.

The Notice states that the tenants had five days from the date of service to pay the amount identified as owing in full 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.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlords. The landlord's written evidence stated that the Proof of Service of the Notice of Direct Request document was handed to both tenants on November 20, 2012.

I accept the evidence before me that the tenants have failed to pay the rent identified as owing in the 10 Day Notice in full within the 5 days granted under section 46 (4) of the *Act*. 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. Therefore, I find that the landlord is entitled to an Order of Possession.

Turning to the landlord's application for a monetary award of \$3,842.00, I find that the landlord has not set out sufficient information to demonstrate the amount of the claim for unpaid rent. The landlord did not complete a monetary order worksheet, nor did the landlord provide any tenant rental ledger, account statement or any other method of confirming that the tenants continue to owe a total of \$3,842.00. The landlord provided no evidence to verify his claim in the Details of the Dispute in his application for dispute resolution that the balance owing for this tenancy as of September 9, 2012 was in fact \$3,142.00 as the landlord claimed. The landlord has provided a brief description in the Details of the Dispute in which he claimed that an additional \$1,300.00 became owing on each of October 1, 2012 and November 1, 2012. However, he provided inadequate evidence to support his assertion that he received payments towards this tenancy of \$1,300.00 on September 25, 2012, and \$600.00 on October 22, 2012. Without receipts, a rent ledger or any other account statement, the landlord has not met the onus placed on him to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of his application for a substantial monetary Order. I find that I am unable to consider the landlord's application for a monetary Order against the tenants by way of a Direct Request proceeding. As I find that the landlord has not provided sufficient evidence to demonstrate his entitlement to the amount of unpaid rent

claimed in his application, I am unable to consider the landlord's application for a monetary Order in a Direct Request proceeding.

Under these circumstances, I adjourn the landlord's application for a monetary Order to be reconvened as a participatory hearing.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing is required in order to determine the details of the landlord's application for a monetary Order. **Notices of Reconvened Hearing for a hearing scheduled for January 8, 2013 at 2:30 p.m. are enclosed with this decision for the applicant to serve, with all other required documents including a copy of this decision, upon the tenants within three (3) days of receiving this decision in accordance with section 88 of the Act.**

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 29, 2012

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Residential Tenancy Branch

