



# 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 a Direct Request proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* in response to an application made by the landlord for an Order of Possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on November 10, 2012 the landlord served each of two the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the *Act* provides that a document is deemed to have been served 5 days after mailing. Based on the written submissions of the landlord, I find that the tenants have been served with the Notice of Direct Request proceeding requesting an Order of Possession and a monetary order.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?  
Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and one of the tenants on August 1, 2011 for a tenancy commencing on August 1, 2011, for the monthly rent of \$700.00 payable on the 1<sup>st</sup> day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was issued on November 3, 2012 with an effective date of vacancy of November 14, 2012, due to \$850.00 in unpaid rent that was due on October 31, 2012 (both pages of the 2-page form have been provided);
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that states that the tenants were served with the notice on November 3, 2012 by leaving it with one of the tenants personally;
- The Landlord's Application for Dispute Resolution dated November 9, 2012 which states that the tenants have not paid the full amount of rent for the months of October and November, 2012, leaving a balance outstanding of \$100.00 for October and \$700.00 for November, 2012, in addition to a late fee of \$50.00.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with the notice to end tenancy as declared by the landlord on November 3, 2012.

I accept the evidence before me that the tenants have failed to pay the rent owed within the 5 days provided 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.

I therefore find that the landlord is entitled to an Order of Possession and a monetary order for unpaid rent.

I further find that the landlord has established a monetary claim as against one of the tenants only in the amount of \$800.00, being \$100.00 for outstanding rent for the month of October, 2012 and \$700.00 for the month of November, 2012. The other tenant has not entered into the tenancy agreement.

With respect to \$50.00 in late fees claimed by the landlord, the regulation to the *Residential Tenancy Act* states that a landlord may charge a fee for late payments but only if that provision is contained in the tenancy agreement. I have reviewed the tenancy agreement and find that there is no agreement by the parties for a late fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective 2 days after service on the tenants.

I further grant a monetary order in the amount of \$800.00 in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* as against one of the tenants only.

This order is final and binding on the parties and may be enforced.

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 16, 2012.

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Residential Tenancy Branch