



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declared that on December 14, 2012, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlords provided a copy of the Canada Post Tracking Number to confirm this mailing.

Based on the written submissions of the landlords and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed duly served with the Direct Request Proceeding documents on December 19, 2012, the fifth day after their mailing.

### Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of a residential tenancy agreement signed by the landlord and the tenant. According to the tenancy agreement, monthly rent was set at \$1,500.00, payable in advance on the 1st day of the month; and
- A copy of a 10 Day Notice posted on the tenant's door on December 4, 2012, with a stated effective vacancy date of December 14, 2012, for \$3,300.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords stated that the 10 Day Notice was posted on the tenant's door at 3:30 p.m. on December 4, 2012. In accordance with

sections 89 and 90(c) of the *Act*, I find that the tenant was deemed to have been served with this 10 Day Notice on December 7, 2012, the third day after its posting on her door.

The Notice states that the tenant 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 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 has been served with notice to end tenancy as declared by the landlords. The landlords' written evidence stated that the Proof of Service of the Notice of Direct Request document was sent by registered mail on December 14, 2012.

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*. I find that the tenant is 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 landlords are entitled to an Order of Possession.

I find that the landlords have not set out sufficient information to support the amount of their claim for unpaid rent of \$3,300.00. The landlords did not complete a monetary order worksheet, nor did the landlords provide any tenant rental ledger, account statement or any other method of confirming that the tenant owes \$3,300.00 in unpaid rent as of December 4, 2012. Without clarification of these issues, the landlords have not met the onus placed on them to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their application for a monetary Order. I find that I am unable to consider the landlords' application for a monetary Order against the tenant by way of a Direct Request proceeding. As I find that the landlords have not provided sufficient evidence to demonstrate their entitlement to the amount of unpaid rent claimed in their application, I am unable to consider in a Direct Request proceeding the landlords' application for a monetary Order.

Under these circumstances, I adjourn the landlords' application for a monetary award to be reconvened as a participatory hearing.

### Conclusion

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

I adjourn the landlords' direct request application for a monetary Order to be reconvened at a participatory hearing. Notices of a participatory hearing date will be sent to the landlords by the Scheduler for the Residential Tenancy Branch. The landlords are responsible for serving the tenant within three days of receiving a hearing date from the Residential Tenancy Branch.

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: December 21, 2012

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Residential Tenancy Branch