



# 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 section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 17, 2013, at 1:35 p.m. the Landlord personally served the Tenant with the Notice of Direct Request Proceeding. The proof of service document also indicates the Landlord posted the Notice of Direct Request Proceeding at the rental unit.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenant that began on September 1, 2012, for the monthly rent of \$850.00 which is payable on the first of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 7, 2013, with an effective vacancy date of January 17, 2012, due to \$1,808.00 in unpaid rent; and

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on January 7, 2013, when it was placed in the Tenant's mailbox or through the mail slot at the rental unit, in the presence of a witness.

### Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act.

In this case the Landlord provided contradictory information as to how the Notice of Direct Request Proceeding documents were served to the Tenant as he indicated on the proof of service document that they were served personally to the Tenant and posted at the rental unit. In the presence of this contradictory information I accept that the Direct Request Proceeding documents were posted at the rental unit and therefore are deemed to be received by the Tenant on January 20, 2013, three days after they were posted, in accordance with section 90 of the Act.

Section 89(2)(c) provides that if the notice of direct request application was posted at the rental unit, service is met only for the request of an Order of Possession. Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply.

**Order of Possession** - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on January 10, 2013, the third day after it was posted to the Tenant's door, and the effective date of the notice is January 20, 2013, pursuant to section 90 of the *Act*. 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*.

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 the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenants.

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: January 21, 2013

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Residential Tenancy Branch

