



# Dispute Resolution Services

Page: 1

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 Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 19, 2013 the landlord served the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 06, 2010 for a tenancy beginning August 15, 2010 for the monthly rent of \$1,300.00 due on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 02, 2013 with an effective vacancy date of January 12, 2013 due to \$1,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay the full rent owed for the month of December and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by which was posted on the door of the tenants rental unit on January 04, 2013 and therefore is deemed served three days later.

The Notice states that the tenants had five days to pay the rent 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.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 07, 2013 and the effective date of the notice is amended to January 17, 2013 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenants have failed to pay the rent owed within the 5 days granted under section 46 (4) of the *Act*.

However the tenancy agreement indicates rent is \$1,300.00 per month whereas the landlord's application indicates rent owed for December is \$1,900.00. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement. Consequently, I find I can only allow the landlord to recover the amount of rent shown in the tenancy agreement and award and limit the landlords claim to the sum of \$1,300.00.

Based on the foregoing, 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.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* effective **two days after service on the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,300.00** for rent owed. This order must be served on the tenants and 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: January 25, 2013

---

Residential Tenancy Branch

