



# 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 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 30, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. However the Canada Post tracking information shows the registered mail was sent to the tenant on January 16, 2013. 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 tenant has 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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 06, 2012 for a tenancy beginning October 13, 2012 for the monthly rent of \$730.00 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 04, 2013 with an effective vacancy date of January 14, 2013 due to \$755.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of January, 2013 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent 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 tenant had five days to pay the rent 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.

### Analysis

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 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 tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. However the 10 Day Notice states rent owed is \$755.00 with no explanation as to the additional amount claimed owed on the 10 day Notice above the amount of rent shown on the tenancy agreement of \$730.00. As the landlord has only claimed the sum of \$730.00 on is application this is the sum I will allow the landlord to recover from the tenant.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 effective **two days after service on the tenant**. This order must be served on the tenant 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 **\$730.00** for rent owed. This order must be served on the tenant 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 29, 2013

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Residential Tenancy Branch

