



# 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 and dealt with an application by the landlord for an order of possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 22, 2012, the landlord served the tenant with the Notice of Direct Request Proceeding both in person and by way of registered mail. The landlord provided a copy of a Canada Post receipt which included a tracking number for the registered mail. A Proof of Service document supplied as evidence of service indicated the mailing address used by the landlord. Section 90 of the Act determines that a document that is sent by mail is deemed to have been served on the 5<sup>th</sup> day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to the requested orders?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;
- A copy of the tenancy agreement which was signed by the parties on October 2, 2012, indicating a monthly rent of \$700.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy dated December 5, 2012, with a stated effective date of December 16, 2012, for \$700.00 in unpaid rent for December 2012.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy by posting to the tenant's door on December 5, 2012, at 2:30 p.m. with another tenant present as a witness. The Act deems the tenant was served on December 8, 2012.

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 pay the rent or 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 landlord.

The notice is deemed to have been received by the tenant on December 8, 2012.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to December 18, 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. There is no evidence before me that the tenant disputed the Notice.

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; December 18, 2012.

Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid December 2012, rent in the sum of \$700.00.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. This Order 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 in the amount of \$700.00 for unpaid December 2012 rent and I grant an Order in that amount. This Order may be filed in the Small Claims Court 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 10, 2013