



# Dispute Resolution Services

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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 landlord for an Order of possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 24, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. A Canada post tracking number was provided as evidence.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

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

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- 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 the parties on October 28, 2002, indicating a monthly rent of \$1,100.00, due on the first day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2013, with a stated effective vacancy date of January 16, 2013, for \$1,485.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door of the rental unit on January 4, 2013, which was witnessed. Section 90 of the Act deems the tenant was served three days later, which would correct the above-mentioned effective date to January 17, 2013.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end from the service date. 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 landlord.

I accept the evidence before me that the tenant has failed to pay rent as required by the tenancy agreement 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. Therefore, I find that the landlord is entitled to an order of possession.

While I am satisfied the tenant did not any pay rent as required under the tenancy agreement. I find that the landlord has provided insufficient evidence on the actual amount owed. The tenancy agreement submitted as evidence indicates monthly rent is \$1,100.00. The landlord submits in the application that the monthly rent is \$1,485.00, however, the landlord did not provide any documentary evidence, such as the notices of rent increases, which would indicate the current monthly rent is \$1,485.00.

As the Direct Request process is a mechanism that allows the landlord to apply for an expedited decision there can be no omissions or deficiencies with items being left open to interpretation or inference as is the case before me. As a result, I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply.

Conclusion

I find that the landlord is 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.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

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

