



# 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 *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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 26, 2013 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document 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 an Order of possession?

Is the landlord entitled to monetary compensation 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 commenced on November 1, 2012 and was signed by the parties on January 2, 2013, indicating a monthly rent of what appears to be \$1,170.00 due 1<sup>st</sup> day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 14, 2013 with a stated effective vacancy date of January 24, 2013, for \$585.00 in unpaid rent.

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 for Unpaid Rent by personal delivery on January 14, 2013 at 7 p.m. Service occurred via an agent for the landlord, with a 2<sup>nd</sup> agent present as a witness. The Act deems the tenant was served on the day of personal delivery, January 14, 2013.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

The details of dispute section of the application indicated the landlord wished to claim to retain the deposit.

### 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 14, 2012.

I have considered the signed tenancy agreement; which appears to have commenced on November 1, 2012; the copy of the agreement supplied as evidence was not signed by the parties until the day after the rent was overdue. The copy of the tenancy agreement submitted as evidence appears to have some changes made to names; the rent owed is not clearly indicated and the amount of deposit paid is not indicated; even though the application details indicated the landlord had wished to retain the deposit.

A landlord may not make a claim against the deposit via the Direct Request Proceeding process.

Given what I find to be some discrepancies with the written tenancy agreement I Order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the tenancy agreement.

At least 5 days prior to the reconvened hearing, I Order the landlord to submit the original copy of the tenancy agreement to the Residential Tenancy Branch, so that I am able to discern the details of that agreement. The 5 days do not include the day of service, the day of the hearing, weekends or statutory holidays.

Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

The parties are at liberty to make evidence submissions, in accordance with the Act and the Rules of Procedure.

Conclusion

The proceeding is Ordered reconvened to a participatory hearing.

This interim decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 01, 2013

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Residential Tenancy Branch

