



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing assisted by an interpreter, and both tenants also attended. The landlord provided evidentiary material prior to the commencement of the hearing. The parties discussed settlement of the matter, and were not affirmed, however the dispute has not settled.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?  
Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

### Background and Evidence

The landlord indicated that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, however a copy of that notice has not been provided for this hearing. The landlord has provided 2 copies of the Proof of Service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the notice itself has not been provided. The landlord further advised that the documents were faxed to the Residential Tenancy Branch on December 10, 2012, however the documents that were actually received did not include a copy of the notice to end tenancy.

### Analysis

The *Residential Tenancy Act* provides that if a tenant fails to pay rent when it is due a landlord may serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after the day that rent is payable under the tenancy agreement. The tenant has 5

days after service to dispute the notice or pay the rent in full. If the tenant pays the rent in full, the notice is of no effect. If the tenant disputes the notice, a hearing would be scheduled for the parties to attend and provide evidence and testimony. If the tenant does not pay the rent in full or apply to dispute the notice within 5 days of service, the tenant is, according to the *Residential Tenancy Act*, conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The *Act* also requires that the notice be in the approved form.

In this case, I have no way of ascertaining whether or not the notice issued to the tenants is in the approved form, or that the notice was issued in accordance with the *Act*, and therefore, I cannot uphold the landlord's notice or issue an Order of Possession.

The landlord is at liberty to serve the tenants with a new notice to end tenancy, and if the tenants do not pay the rent in full or dispute the notice within 5 days, the landlord may again apply for an Order of Possession, but must ensure that a copy of the notice is available as evidence for the Arbitrator to determine whether or not the notice is in compliance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without 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 17, 2013

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Residential Tenancy Branch

