



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TERA I CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MN SD, FF

### Introduction

This hearing was scheduled to hear a landlord's application for an Order of Possession and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord affirmed that he slid the Application for Dispute Resolution and Notice of Hearing under the tenant's door on February 28, 2013 and his evidence was also slid under her door on March 12, 2013. The landlord confirmed that the tenant continues to reside at the rental unit.

When a respondent does not appear at the hearing, the applicant bears the burden to prove the hearing documents were served upon the respondent in a manner that complies with section 89 of the Act. Information concerning service of document may also be found in various publications produced by the Residential Tenancy Branch, including Fact Sheets and Policy Guideline 12.

Where a party requests an Order of Possession they are required to serve the Application for Dispute Resolution in one of the ways required under section 89(2). One of the permissible methods of service is to attach the hearing documents to the tenant's door or another conspicuous place where the tenant resides. Although the documents were not posted or attached I deem the hearing documents sufficiently served upon the tenant pursuant to the authority afforded me under section 71 of the Act for purposes of the landlord's request for an Order of Possession only.

Where a party requests a Monetary Order they are required to serve the respondent with the Application for Dispute Resolution in one of the ways that complies with section 89(1) of the Act. In this case, the landlord was required to serve the Application for Dispute Resolution to the tenant either in person or by registered mail. Attaching the documents to the door or another conspicuous place is not sufficient for a Monetary Order and I do not deem the hearing documents sufficiently served for purposes of the monetary claim. The landlord is granted leave to file another Application for Dispute Resolution seeking monetary compensation from the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy commenced October 16, 2012 and the tenant paid a security deposit of \$437.50. The tenant is required to pay rent of \$875.00 on the 1<sup>st</sup> day of every month. The tenant failed to pay rent for January 2013 and February 2013 when due. The tenant provided the landlord with a cheque dated February 18, 2013 in the amount of \$1,750.00. Since February 18, 2013 the landlord has been trying to cash the cheque but the tenant's bank has advised him that it is not negotiable. The landlord has a copy of the tenant's cheque and a letter from the tenant's bank dated March 12, 2013.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and personally served it upon the tenant on February 19, 2013. The Notice indicates rent of \$1,750.00 was outstanding and has a stated effective date of March 1, 2013. The tenant did not file to dispute the Notice and has not otherwise provided payment of the outstanding rent to the landlord.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice to end the tenancy on February 19, 2013. I also accept the evidence before me that the tenant has not provided the landlord with payment of the outstanding rent by way of a negotiable cheque or any other means since receiving the 10 Day Notice. Nor, did the tenant file to dispute the 10 Day Notice.

Since I have found that the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the effective date of March 1, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I also award the landlord the \$50.00 filing fee paid for this application and I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord may deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application. The landlord's monetary claims for unpaid/loss of rent have been dismissed with leave.

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: March 21, 2013

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Residential Tenancy Branch

