



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent 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 April 8, 2013 at 2:00 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- 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 all parties for a fixed term tenancy beginning July 10, 2011, and switched to a month to month tenancy after June 30, 2012, for the monthly rent of \$825.00 due on 1st of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, March 2, 2013, with an effective date listed as March 12, 2013, due to \$1,650.00 in unpaid rent that was due on March 2, 2013;

- A note on the Landlord's application for dispute resolution stating they are seeking payment for March 2013 and April 2013 rent for a total amount of \$1,650.00;
- A tenant ledger which indicates the amount outstanding as of March 2, 2013 was \$875.00, a late charge of \$25.00 was applied March 6, 2013, and payment of \$849.00 was applied or posted to the Tenant's account on Monday March 11, 2013 leaving a balance owing of \$0.00.
- An undated letter indicating the Tenant would be travelling for three months and that he was submitting post dated rent cheques and an e-mail address for contact in the event of an emergency.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on March 2, 2013 when it was posted to the Tenant's door in the presence of a witness.

### Analysis

The proof of service document submitted by the Landlord indicates the Landlord served the Tenant with the Notice of Direct Request by registered mail to the rental unit address; however, the Landlord submitted evidence which indicates the Tenant is on vacation for three months and therefore could not receive the Notice of Direct Request proceeding documents.

Furthermore, the evidence does not support which date the Tenant left on vacation therefore there is insufficient evidence to determine if the 10 Day Notice was posted after the Tenant left on their vacation.

The Landlord filed their application for an Order of Possession and Monetary Order on April 5, 2013 stating the Tenant owes for March and April 2013 rent. The 10 Day Notice was issued March 2, 2013, indicating rent was due March 2, 2013, in the amount of \$1,650.00. A 10 Day Notice is not valid if it is issued on the same day rent is due because rent is not considered late until the day after it is due. The tenancy agreement indicates contradictory evidence that rent is due on the first of each month not the second of each month.

The Landlord provided a tenant ledger which provides further contradictory information indicating a payment was posted to the Tenant's account on Monday March 11, 2013 leaving a balance due of zero (\$0.00). Accordingly, the evidence supports that the

Tenant does not owe \$1,650.00 as listed on the 10 Day Notice and does not owe for March and April 2013 rent as indicated on the application form.

The 10 Day Notice was posted to the Tenant's door on March 2, 2013, he is deemed to received the Notice on March 5, 2013 and rent was payable within five days of receipt of the Notice. There is insufficient evidence to support if the payment was actually provided to the Landlord on Sunday March 10, 2013 and then posted Monday March 11, 2013 or if the Landlord's office is even open on Sundays. It is reasonable to conclude that the 10 Day Notice is void as the Tenant paid the rent owed in full by the first business of being due and due to the incorrect dates as noted above.

Upon consideration of the above mentioned inconsistencies I find this application does not meet the requirements of the Direct Request Process and the application is dismissed.

#### Conclusion

The Landlord's application is HEREBY DISMISSED.

The 10 Day Notice issued March 2, 2013, is HEREBY CANCELLED and is of no force or effect.

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: April 11, 2013

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Residential Tenancy Branch

