



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shivam Investments Inc.  
and [tenant name suppressed to protect privacy]

## **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 June 7, 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 fixed term residential tenancy agreement that was to end on January 31, 2011, which was signed by the parties on January 8, 2010, indicating a monthly rent of \$475.00 due on the 1<sup>st</sup> day of the month;

- A Notice of Rent Increase issued on November 29, 2012 increasing the rent from \$480.00 to \$500.00 effective March 1, 2013; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 7, 2013 with a stated effective vacancy date of May 17, 2013, for \$495.00 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 posting to the tenant's door on May 7, 2013, with another tenant present as a witness. The landlord submitted a Proof of Service document signed by the witness and the landlord's agent; as evidence of service.

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

The landlord has claimed unpaid May 2013 rent in the sum of \$495.00.

The application details indicated that for at least the past year the tenant has paid \$495.00 per month rent; that he gave notice to move in March and that he did not pay May 2013 rent, which is owed in the sum of \$500.00.

### 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 the 3<sup>rd</sup> day after posting; May 10, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to May 20, 2013.

I accept the evidence before me that the tenant has failed to pay rent owed for May 2013, within the 5 days granted under section 46 (4) of the Act. However, in the absence of a Notice of Rent Increase, increasing rent owed from the original sum of \$475.00 to \$480.00, I find that the claim for unpaid rent is dismissed. I cannot determine when rent was increased from \$475.00 to \$480.00; the sum upon which the Notice of Rent Increase issued in November 2011 was based. In the absence of evidence that rent has been increased to \$480.00, and any accounting of rent owed throughout the tenancy, I find that the monetary claim must fail.

As I have accepted that May rent, whether it was \$475.00, \$480.00 or \$500.00 owed was not paid and, in the absence of evidence that the tenant disputed the Notice 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; May 20, 2013.

Therefore, I find that the landlord is entitled to an Order of possession.

Pursuant to section 55 of the Act, the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

The monetary claim is dismissed.

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: June 13, 2013

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Residential Tenancy Branch

