



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rockwell Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This matter proceeded 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 for unpaid rent or utilities.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on September 24, 2013, the landlord served the tenant with the notice of direct request proceeding via registered mail.

Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the direct request proceeding documents as of September 29, 2013.

### Preliminary and Procedural Matter

The applicant landlord did not indicate in his application that he was applying for a monetary order for unpaid rent or utilities, although the landlord did indicate an amount of \$800.00 in their application. As a result and in the interest of fairness, the landlord is at liberty to apply for unpaid rent or utilities if it was the intention of the landlord to apply for a monetary order for unpaid rent or utilities under the *Act*.

### Issue to be Decided

- Is the landlord entitled to an order of possession 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 was signed by the tenant on May 29, 2013, indicating a monthly rent of \$800.00 due on the first day of the month; and
- A copy of a 10 day notice to end tenancy for unpaid rent which was issued on September 5, 2013, with a stated effective vacancy date of September 15, 2013, for \$825.00 in unpaid rent which incorporates a \$25.00 late fee.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenant's door which was witnessed by third party, LW, on September 5, 2013 at 12:30 p.m. Section 90 of the *Act* deems the tenant was served three days later on September 8, 2013 which would correct the above-mentioned effective vacancy date automatically under the *Act* to September 18, 2013.

The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy within five days from the date of service.

### 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.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective vacancy date of the notice, which is September 18, 2013. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent.

### Conclusion

I find that the landlord is entitled to an order of possession effective **two days after service** on the tenant and this order may be filed in the Supreme Court and enforced as an order of that court.

This 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: September 30, 2013

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Residential Tenancy Branch

