



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westcorp Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of an *ex parte* hearing of a 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 based on unpaid rent and a monetary Order. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that at or about 9:20 p.m. on September 6, 2013, the landlord handed the tenant the Notice of Direct Request Proceeding.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding provided to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on May 3, 2013, indicating a monthly rent of \$750.00 due on the 1st day of the month;
- A copy of a the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of July 15, 2013, with a stated effective vacancy date of July 25, 2013, for \$475.00 in unpaid rent; and

- A Resident Ledger outlining charges owing and payments made from the May 2013 commencement of this tenant until September 1, 2013.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice by posting it on the tenant's door, at 2:30 p.m. on July 15, 2013. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on July 18, 2013, the third day after its posting on her door.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. 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.

I first note that although the tenancy agreement entered into written evidence by the landlord refers to a single monthly payment of \$750.00, the landlord's Resident Ledger has varying references to both a pad rental, implying that this rental is on a manufactured home park site, and a residential rent. There are also references in the Resident Ledger to reductions in rent for "Residential Rent Incentives."

In addition, there are references in the Resident Ledger to the landlord's application of payments received from the tenant towards her security deposit, which at various times, are shown as outstanding, or partially outstanding. Based on my understanding of what is a confusing set of figures from the Resident Ledger, it would appear that the landlord has been seeking a monetary Order in part and perhaps even an Order of Possession on the basis of the tenant's alleged failure to pay her security deposit, set at \$375.00 in the residential tenancy agreement.

While all of the above features of this tenancy and the landlord's Resident Ledger present problems for my approval of the landlord's application by way of the Residential Tenancy Branch's direct request process, the Resident Ledger also reports that the landlord has received four payments from the tenant since the 10 Day Notice was issued. It would appear that the landlord has continued to cash the tenant's pre-paid rent cheques of \$750.00 for both August and September 2013, and has also accepted two smaller cash payments with respect to this tenancy.

Based on the landlord's acceptance of a series of payments from the tenant after the effective date of the landlord's 10 Day Notice, I find that the landlord has reinstated this tenancy. As such, the landlord's 10 Day Notice is no longer of any effect or force. For these reasons, I dismiss the landlord's 10 Day Notice without leave to reapply. If the landlord intends to end this tenancy for non-payment of rent, the landlord will need to issue a new valid 10 Day Notice to the tenant.

Due to the confusing nature of the landlord's Resident Ledger, I am unable to consider the landlord's application for a monetary Order. I dismiss this element of the landlord's application with leave to reapply.

Should the need arise for the landlord to seek an Order of Possession based on the tenant's non-compliance with any new 10 Day Notice issued to the tenant, I would recommend that the landlord utilize the standard process for applying for dispute resolution, rather than the direct request process. The residential tenancy agreement and the Resident Ledger reveal that a participatory hearing would be necessary to consider any application for dispute resolution from the landlord with respect to this tenancy.

### Conclusion

I dismiss the landlord's application for an Order of Possession based on the existing 10 Day Notice without leave to reapply.

I dismiss the landlord's application for a monetary Order with 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: September 11, 2013

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Residential Tenancy Branch

