



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONEWATER VENTURES #110 LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (referred to as the *Act*) in response to a landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on October 18, 2013 the landlord served one of the tenants with the Notice of Direct Request by registered mail. Based on the written submissions of the landlord, I find that this tenant (TAT) was served with the Notice of Direct Request Proceeding requesting an Order of Possession and a Monetary Order. However, the landlord failed to provide any Proof of Service of the Notice of Direct Request on the second tenant (JPK) named on the application and as a result, the application against this tenant is dismissed; any subsequent orders issued will only be in the name of the tenant (TAT) who was served in accordance with the *Act*.

### Issue(s) to be Decided

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

Has the landlord established a monetary claim against the tenant for unpaid rent?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on December 21, 2012 for a tenancy commencing on January 1, 2013 for the monthly rent of \$850.00 payable on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 4, 2013 with an effective vacancy date of October 16, 2013 due to \$850.00 in unpaid rent due on October 1, 2013 (both pages of the two page approved form were provided);

- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that the landlord served the notice to the tenants on October 4, 2013, by posting it to the tenants' door with a witness.
- The Landlord's Application for Dispute Resolution which was made on October 18, 2013 claiming outstanding rent of \$850.00 for October, 2013.

### Analysis

I have reviewed all the documentary evidence and accept that the tenants were served with the notice to end tenancy by posting it to the door. The *Act* states that documents are deemed to have been served 3 days after posting. Therefore, I find that the tenants were deemed to be served on October 7, 2013, and the effective date of vacancy is automatically changed to October 17, 2013 pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenant has failed to dispute the notice or pay the rent owed within the 5 days provided under Section 46(4) of the *Act*. Therefore, 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. I therefore find that the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$850.00** in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: October 24, 2013

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Residential Tenancy Branch

