



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### 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 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 on September 30, 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 by registered mail is deemed to have been served five days.

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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 10, 2013, indicating a monthly rent of \$1,000.00 due on the 1st day of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued on August 4, 2013 with a stated effective vacancy date of August 15, 2013, for \$1,000.00 in unpaid rent due on 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 having a witness present when personally serving the tenant on September 4, 2013.

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.

Although the landlord signed the 10 Day Notice, he did not place the correct date on that Notice. The landlords notice states it was served on August 4, 2013 for rent due on September 1, 2013. The service date is premature to the rent due as claimed.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Since the landlord failed to date this notice correctly, the landlord has not complied with the statutory requirement established under section 52 of the *Act*. I find that there is an error in the landlords’ 10 Day Notice which invalidates that Notice. The landlord’s 10 Day Notice is of no effect. 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, he will need to issue a new valid 10 Day Notice to the tenant.

I now turn to the landlord’s application for a monetary order. Due to the numerous inconsistencies and conflicting dates I dismiss this portion of the landlord’s application with leave to reapply as the landlord has made references to partial payments but am unclear as to the status of the tenancy or the exact amount owing.

### 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: October 07, 2013

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Residential Tenancy Branch

