



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy dated August 27, 2013 and for a monetary award for unpaid rent and loss of rental income.

There is no dispute about money that has been or not been paid. The tenant denies being served with the ten day Notice.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the ten day Notice was served on the tenant?

### Background and Evidence

The rental unit is a four bedroom house. The tenant resides there with her four children. The tenancy started May 15, 2013 for a fixed term to May 31, 2014. The monthly rent is \$1250.00. The landlord holds a \$625.00 security deposit.

The tenant did not pay the August rent on time. She claims that most of it had been stolen. Since the August rent came due on August 1, 2013 the tenant has paid \$950.00 on August 28<sup>th</sup>, \$500.00 on October 18<sup>th</sup> and \$900.00 on October 29<sup>th</sup>.

Mr. D. L. testified that he attended at the premises on August 27, 2013 at two in the afternoon to serve the ten day Notice. No one answered the door and so he attached the ten day Notice to the door with tape.

The tenant testified that when she returned home that afternoon there was no Notice on her door. She says she did not see the Notice until it was received on September 23<sup>rd</sup> in the landlord's evidence package compiled for this hearing.

There is no evidence of any other communication between the parties regarding the Notice until October 18<sup>th</sup> when the landlord received a letter from the tenant dated October 4<sup>th</sup> and in which the tenant claimed never to have received the Notice.

The parties agree that the tenant presently owes \$1400.00.

### Analysis

Mr. M. points out that the Notice was not fully completed in that the landlord failed to check a box to indicate whether the Notice was served in person or on the door or by registered mail. I agree the Notice was not fully completed but I don't consider a failure in that particular regard to be one fatal to the Notice. It is not a vital particular and the failure to complete it does not mislead anyone.

In all the circumstances I consider it most likely that the Notice was duly served on the tenant. I accept the evidence of Mr. L. as a person in the business of serving landlord/tenant notices for twenty years that he firmly affixed the Notice to the door on August 27. I find it unlikely that someone other than the tenant would come to the front door of the home and tear away or remove the Notice. I consider that if the Notice had been removed without the tenant seeing it, then the tenant would have taken steps to communicate with the landlord about it earlier than the three and one-half weeks between receipt of the Notice in the landlord's evidence package on September 23<sup>rd</sup> and delivery of the tenant's letter to the landlord on October 18<sup>th</sup>.

### Conclusion

The ten day Notice to End Tenancy dated August 27, 2013 was properly served on the tenant and by operation of s.46 of the *Residential Tenancy Act* has resulted in the end of this tenancy on September 10<sup>th</sup>, 2013. The landlord is entitled to an order of possession to be effective November 30, 2013, a date suggested by Mr. J. D. at hearing.

The landlord is entitled to a monetary award of \$1400.00 plus the \$50.00 filing fee for this application. I authorize the landlord to retain the \$625.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$825.00.

This decision does not encompass any rent or damages for loss of November rental income the landlord may be entitled to.

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 30, 2013

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Residential Tenancy Branch

