



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** OPR, MNR

### **Introduction**

This matter was conducted 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 and a Monetary Order.

The Landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on November 19, 2013, at 4:20 p.m., the Landlord posted the Notice of Direct Request Proceeding to the Tenants’ door at the rental unit.

The Proof of Service of the Notice of Direct Request document clearly states that a Notice of Direct Request may not be served by posting it to a tenant’s door for the purpose of requesting a Monetary Order. Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

A landlord may serve a tenant with the Notice of Direct Request by posting it on a tenant's door for the purpose of requesting an Order of Possession, but not for the purpose of requesting a Monetary Order. Therefore, the Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

### **Issue(s) to be Decided**

- Is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each of the Tenants;
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent;
- A copy of a residential tenancy agreement which was signed by the parties on October 24, 2013, indicating a monthly rent of \$1,250.00 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 November 7, 2013, with a stated effective vacancy date of November 17, 2013, for \$1,250.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the rent remains unpaid. The documentary evidence indicates that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document to the Tenants' door on November 7, 2013, at 3:00 p.m. The Proof of Service document is signed by a witness.

The Tenants 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 Notice to End Tenancy was posted to the Tenant s' door on November 7, 2013. Service in this manner is deemed to be effected 3 days after posting the document, in this case November 10, 2013.

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

Section 53 of the *Act* provides that an incorrect end-of-tenancy date on a notice to end tenancy is automatically corrected to the earliest date that complies with the *Act*. Based on the foregoing, I find that the Tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on November 20, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession.

### **Conclusion**

Pursuant to the provisions of Section 55 of the *Act*, I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord's application for a Monetary Order is dismissed **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: November 28, 2013

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Residential Tenancy Branch

