



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MGMT  
and [tenant name suppressed to protect privacy]

## **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 for unpaid rent and a monetary order for unpaid rent.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on October 25, 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 in this manner is deemed to have been served five days later.

Based on the written submissions of the landlord, I find that the tenant has been deemed duly served with the direct request proceeding documents as of October 30, 2013.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?

### 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 parties on September 26, 2012, indicating a monthly rent of \$1,450.00 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 October 4, 2013, with a stated effective vacancy date of October 19, 2013, for \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by registered mail on October 4, 2013. Section 90 of the *Act* deems the tenant was served five days later on October 9, 2013 confirms that the effective vacancy date is correct as written, October 19, 2013.

The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy within five days from the date of service. The landlord indicates in their application and provided a tenant ledger that supports that the tenant did make a partial payment after being served the 10 Day Notice; however, continued to owe \$500.00 in unpaid rent as of the date of the landlord's application, October 23, 2013, which was received by the Arbitrator on November 21, 2013 for consideration.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

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

Based on the foregoing, 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 vacancy date of the notice, October 19, 2013. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent and a monetary order for unpaid rent.

### Conclusion

I find that the landlord is entitled to an order of possession effective **two (2) days after service** on the tenant and this order may be filed in the Supreme Court and enforced as an order of that court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$500.00** comprised of rent owed. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 21, 2013

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Residential Tenancy Branch

