



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlords submitted signed Proof of Service documents of the Notice of Direct Request Proceeding which declares that on November 27, 2013, at 4:30 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding by posting them to the Tenants' door. Based on the written submissions of the Landlord, I find that each Tenant is deemed to be served with the Dispute Resolution Direct Request Proceeding documents effective November 30, 2013, three days after they were posted to the door; in accordance with section 90 of the *Residential Tenancy Act*.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and each Tenant for a one year fixed term tenancy agreement that began on September 11, 2013, for the monthly rent of \$750.00 due in the 1<sup>st</sup> of each the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 09, 2013, with an effective vacancy date listed as November 19, 2013, due to \$750.00 in unpaid rent that was due on November 1, 2013; and
- Photos of the 10 Day Notice on the door.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on November 9, 2013, at 11:00 a.m. when it was posted to their door, in the presence of a witness.

### Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve each respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act [Section 89 of the Act has been pasted at the end of this decision for further reference].

Section 89(2)(c) provides that if the notice of direct request application was posted at the rental unit, service is met only for the request of an Order of Possession. Furthermore, the Proof of Service Document stipulates the following if service is by posting to the day: *"NOTE: Do not use this method if requesting a monetary order"*

In this case the Landlord provided evidence which indicates each Tenant was served the Notice of the Direct Request process hearing documents by posting them on the rental unit door on November 27, 2013, in the presence of a witness. This service meets the requirements under section 89(2)(c) of the Act; however, I find that the service requirements for the request for a monetary order have not been met, as required under section 89(1) of the Act. Accordingly, I dismiss the Landlords' request for a monetary order, with leave to reapply.

**Order of Possession** - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed received by the Tenants on November 12, 2013, three days after it was posted to the door, and the effective date of the notice is November 22, 2013, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlords an Order of Possession.

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenants.

I HEREBY DISMISS the Landlord's request 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: December 02, 2013

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Residential Tenancy Branch

## **Section 89 of the *Residential Tenancy Act***

**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).

