



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SRB HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or loss of rent. The tenants did not appear at the hearing.

The building manager testified that she personally served two hearing packages, one for each tenant, upon the tenant referred to by initials WR in this decision. The building manager confirmed that the outstanding rent was paid and the landlord is no longer seeking a Monetary Order.

Section 89(2) of the Act provides that where a landlord seeks an Order of Possession, the landlord's application may be served upon a tenant by giving the application to an adult person that resides with the tenant. I find that in serving both hearing packages to WR both co-tenants were served with the landlord's application for purposes of requesting an Order of Possession.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord submitted that the monthly rent of \$775.00 is due on the 1<sup>st</sup> day of every month. The tenants have been repeatedly late paying rent and often pay the rent by way of partial payments.

On October 2, 2013 the building manager attempted to serve a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant in person. When the tenant refused to accept the 10 Day Notice, the building manager posted it on the door of the rental

unit in the presence of a witness. The Notice indicates rent of \$400.00 was outstanding as of October 1, 2013 and has a stated effective date of October 12, 2013.

On October 11, 2013 the tenants gave the landlord \$400.00 and the landlord issued a receipt indicating: "*For use and occupancy only. This does not reinstet the tenancy.*" [reproduced as written].

The landlord testified that monies were also received in November and December 2013 for which receipts were issued "For use and occupancy only".

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent that is due the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days of receiving it then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on October 2, 2013. Pursuant to section 90 of the Act it is deemed to be received by the tenants three days later, on October 5, 2013 and the effective date automatically changed to read October 15, 2013.

The tenants had until October 10, 2013 to pay the outstanding rent to nullify the Notice or file an Application for Dispute Resolution to dispute the Notice. Since the tenants did not pay the outstanding rent or file to dispute the 10 Day Notice by October 10, 2013 I find the tenancy legally ended on October 15, 2013 and the landlord is entitled to regain possession of the rental unit.

Based upon the undisputed evidence and testimony provided to me, I am also satisfied the landlord did not reinstate the tenancy as payments received October 11, 2013 and in subsequent months were accepted "for use and occupancy only."

As the landlord has accepted rent for “use and occupancy only” for the month of December 2013 I provide the landlords with an Order of Possession effective December 31, 2013.

I award the filing fee to the landlord and authorize the landlord to deduct \$50.00 from the tenants’ security deposit in satisfaction of this award.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on December 31, 2013. The landlord has been authorized to deduct \$50.00 from the tenants’ security deposit.

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 10, 2013

---

Residential Tenancy Branch

