



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 20, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service.

Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

Therefore, based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents effective January 25<sup>th</sup>, 2014.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to 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 May 31, 2009, indicating a monthly rent of \$1,050.00 due in advance by the first day of each month;

- A Notice of Rent Increase issued October 13, 2011, increasing rent to \$1,095.00 effective February 1, 2012;
- A copy of a January 14, 2014 Breach Notice to the tenant in relation to unpaid rent;
- A copy of a tenant ledger indicating unpaid rent indicating \$795.00 owed in December 2013 and \$1,095.00 owed in January 2014; and
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities which was issued on January 9, 2014 with a stated effective vacancy date of January 19, 2014, for \$2,190.00 in unpaid rent due January 1, 2014.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 day Notice to end tenancy for unpaid rent or utilities by posting to the tenant's door on January 9, 2014 at 10:30 a.m. Agent I.C. posted the Notice, with the maintenance person, J.M. present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,190.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The application details indicated that the landlord was claiming \$2,190.00 in unpaid rent for December 2013 and January 2014. The tenant ledger supplied as evidence indicated that the tenant had paid \$300.00 on December 13, 2013. A hand-written notation at the bottom of the ledger showed a total of \$1,890.00.

### 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.

The Notice is deemed to have been received by the tenant on the 3<sup>rd</sup> day after posting to the door; January 12, 2014.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 22, 2014.

Therefore, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit by January 22, 2014.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; January 22, 2014.

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. The 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 section 67 in the amount of \$1,890.00 (December 2013, \$795.00 and January 2014, \$1,095.00) and I grant an Order in that amount. These sums owed are reflected on the tenant ledger. 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.

The balance of the monetary claim is dismissed.

### Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent in the sum of \$1,890.00.

The balance of the monetary claim is dismissed.

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: January 27, 2014

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Residential Tenancy Branch

