



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DIRECT REQUEST DECISION**

Dispute Codes: OPR, MNR

### Introduction

This application proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act. The landlord seeks an Order of Possession and a monetary order for rental arrears based on a 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 30, 2014 at 12:00 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act, (*the Act*), determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent pursuant to sections 55 and 67 of the Act?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding and Proof of Service of the Ten-Day Notice, verifying service to the tenant,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 21, 2014 for \$5,050.00 in rental arrears,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 17, 2013 for \$4,100.00 in rental arrears and

- A copy of a residential tenancy agreement which was signed by the parties on September 16, 2008, confirming that the rent is \$1,350.00 per month, due on the first day of each month.

Documentary evidence filed by the landlord indicates that the tenant had accrued a total amount of arrears of \$5,050.00. However, the landlord has not submitted a tenant ledger showing when the debt occurred and what payments were made by the tenant during that period.

The landlord is seeking \$5,000.00 in compensation and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

### Analysis

Based on the evidence before me, I find that the tenant was duly served with a Notice to End Tenancy for Unpaid Rent by registered mail sent on DDAATTEE. The Notice states that the tenant has five days to pay the rent to cancel the Notice or to apply for Dispute Resolution to dispute the Notice. I find that the tenant did not apply to dispute the Notice to End Tenancy within five days and did not pay the arrears within five days.

I find that the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Given the above facts, I find that the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I find that the arrears for December, as shown on the copy of the 10-Day Notice to End Tenancy for Unpaid Rent included in the landlord's evidence were \$4,100.00. By January 21, 2014 the evidence shows that the tenant owed \$5,050.00 in arrears.

Based on the monthly rent of \$1,350.00, I find that it is clear that the tenant must have made a partial payment toward rent between the December 17, 2013 Notice and the January 21, 2014 Notice. I find that the landlord has not included sufficient evidence in regard to the monetary claim to award compensation through the direct request process.

Given the above, I find that the landlord's monetary claim is must be dismissed as it lacks sufficient details to determine when the rent shortfall occurred, what payments were made and whether they served to reinstate the tenancy.

I hereby grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby order that the portion of the landlord's direct request application relating to the monetary claim is dismissed.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The claim for monetary compensation is dismissed without leave.

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: February 21, 2014

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Residential Tenancy Branch

