



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 24, 2014 the Landlord posted the Notice of Direct Request Proceeding at the rental unit. Based on the written submission of the Landlord, I find the Tenant has been served with the Dispute Resolution Direct Request Proceeding document. Section 90 of the *Act* stipulates that a document that is posted is deemed received on the third day after it is mailed which, in these circumstances, is February 27, 2014.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement which names an individual with a different name than the Tenant.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to be signed by the Landlord and is dated February 06, 2014. The Notice does not declare the date the Tenant must vacate the rental unit.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that the Notice was posted on the door of the rental

unit on February 06, 2014, in the presence of another person, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door on February 06, 2014; that rent of \$667.00 is due for January; and that rent of \$850.00 is due for February.

### Analysis

Section 46 of the *Residential Tenancy Act (Act)* allows a landlord to end a tenancy if the tenant does not pay rent when rent is due, by serving a Ten Day Notice to End Tenancy for Unpaid Rent.

Section 46(2) of the *Act* stipulates that a Notice to End Tenancy under this section must comply with section 52 of the *Act*.

Section 52(c) of the *Act* stipulates that to be effective a Notice to End Tenancy must be declare the effective date of the Notice.

In the circumstances before me I find that the Notice to End Tenancy does not declare the effective date of the Ten Day Notice to End Tenancy that was posted to the Tenant's door on February 06, 2014. I therefore find that the Notice was not effective, as the Notice does not comply with section 52(c) of the *Act*.

I find that the Landlord does not have the right to end this tenancy on the basis of the flawed Notice to End Tenancy, even if the Tenant did not pay rent when it was due. The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy if rent remains unpaid, although the Landlord is cautioned that the Tenant's correct name should appear on the Notice to End Tenancy and the Application for Dispute Resolution.

### Conclusion

The Landlord's application for an Order of Possession is dismissed.

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: March 03, 2014

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Residential Tenancy Branch

