



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR, MNR

### **Introduction**

The landlord applied for an Order of Possession and a Monetary Order for unpaid rent under the Direct Request Procedure, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 5, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery at the rental unit.

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

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession and monetary compensation for unpaid rent?

### **Background and Evidence**

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on September 29, 2013 indicating a monthly rent of \$1,000.00 due on the 1<sup>st</sup> day of every month for a fixed term expiring March 31, 2014 and payment of a \$600.00 security deposit;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 8, 2014 with a stated effective vacancy date of March 1, 2014, for \$430.00 in unpaid rent as of February 1, 2014; and,
- A copy of a Proof of Service of the 10 Day Notice indicating the landlord personally served the tenant with the 10 Day Notice at the rental unit on February 8, 2014 in the presence of a witness.

The 10 Day Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

In the details of dispute the landlord states that the tenant paid \$570.00 of the rent owed for February 2014 but failed to pay rent the balance of \$430.00. The landlord is seeking a Monetary Order in the amount of \$430.00.

### Analysis

I have reviewed all documentary evidence and accept that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent as declared by the landlord.

I accept the evidence before me that the tenant failed to pay the rent owed in full or dispute the 10 Day Notice within 5 days of receiving the Notice as permitted under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy would end on the effective date of the Notice. Therefore, I find that the tenancy ended March 1, 2014 and the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

I note the landlord's evidence indicates that the landlord collected a security deposit in excess of the limitation (one-half of the monthly rent) imposed by the *Act*. In such cases, the tenant is entitled to deduct the amount of the overpayment from rent due to the landlord. Since the tenant overpaid the security deposit by \$100.00 I have deducted \$100.00 from the landlord's monetary claim of \$430.00. As such, the landlord is now holding a \$500.00 security deposit and the landlord has been provided a Monetary Order for the unpaid rent in the amount of \$330.00.

The security deposit remains in trust to be administered in accordance with the *Act*.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided a Monetary Order in the amount of \$330.00 to serve upon the tenant and enforce as necessary.

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 21, 2014

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Residential Tenancy Branch

