



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”) in response to an application made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Direct Request process is a mechanism that allows the Landlord to apply for an expedited decision without a participatory hearing. As a result, the Landlord must follow and submit documentation **exactly** as the Act prescribes and there can be no omissions or deficiencies within the written submissions that are left open to interpretation or inference.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that the Landlord personally served one of the Tenants named on the application (referred to as “TH”) with the Notice of Direct Request on March 11, 2014.

The Landlord submitted another signed Proof of Service of the Notice of Direct Request which declares that the Landlord personally served the other Tenant named on the application (referred to as “SO”) with the Notice of Direct Request. However, the Landlord did not fully complete the Proof of Service document **or** provide sufficient evidence to show the **date** SO was served the Notice of Direct Request. Therefore, I am unable to determine whether SO was served in accordance with the requirements of Section 59(3) of the Act. As the landlord has only proved service of the Notice of Direct Request to TH in accordance with the Act, any subsequent monetary order issued to the Landlord will only be in the name of TH.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?  
Has the Landlord established a monetary claim against TH 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 Landlord and the Tenants on September 15, 2013 for a tenancy commencing on September 1, 2013 for the monthly rent of \$950.00 payable on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on January 19, 2014 with an effective vacancy date of January 31, 2014 due to \$1,705.00 in unpaid rent due on January 1, 2014 (both pages of the two page approved form were provided);
- A copy of the Proof of Service of the Notice which states that the Landlord served the Notice to the Tenants on January 19, 2014, by posting it to the Tenants' door with a witness; and,
- The Landlord's Application for Dispute Resolution which was made on March 10, 2014. The Landlord explains in the details section of the application that since the issuing of the notice, of the \$1,705.00, the Tenants have paid only \$1,450.00 by February 1, 2014. This still leaves an outstanding balance of \$255.00 which is now being claimed by the Landlord in the application.

### Analysis

I have reviewed all the documentary evidence and accept that the Tenants were served with the Notice, which complies with the Act, by attaching it to the Tenants' door in the presence of a witness.

The Act states that documents are deemed to have been served three days after attaching them to the door. Therefore, I find that the Tenants were deemed to be served on January 22, 2014, and the effective date of vacancy on the Notice is automatically changed to February 1, 2014 pursuant to section 53 of the Act.

I accept the evidence before me that the Tenants have failed to dispute the Notice or pay the **full** rent owed within the 5 days provided under Section 46(4) of the Act. I also find that because the Tenants have only made partial payments before the effective date of the Notice, this is not sufficient to re-instate the tenancy. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the corrected vacancy date of the Notice.

Because the Tenants are jointly and severally liable for this single tenancy, the Landlord is entitled to an **Order of Possession** of the rental suite even though only one of the Tenants was served with the Notice of Direct Request in accordance with the Act.

However, an application for a **Monetary Order** requires that each Tenant named in the application be served Notice of the Direct Request. In this case, the Landlord only served TH. As a result, the Landlord is entitled to a Monetary Order against TH only.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the Landlord effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental suite.

I further grant a Monetary Order in the amount of **\$255.00** in favour of the Landlord pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on **TH** with payment instructions and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if TH fails to make payment.

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 18, 2014

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Residential Tenancy Branch

