



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR, MNR

### Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 26, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 12, 2011, indicating a monthly rent of \$1,700.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 1, 2014, with a stated effective vacancy date of January 11, 2014, for \$5,700.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed for October, November, December of 2013, and rent for January 2014, and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery, which was witnessed, on January 1, 2014.

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

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full for October (\$600.00 still owing), November and December (\$3,400.00 still owing) within the 5 days granted under section 46 (4) of the *Act*.

However, the Tenant had until midnight on the first day of January 2014 to pay the Landlord the rent for January 2014. Therefore, the Landlord was unable to serve the Tenant with a 10 day Notice to End Tenancy for January rent on the first day of January 2014, and should have done this for January rent on January 2nd.

Nevertheless, I accept the evidence of the Landlord that rents are still owed for October, November and December of 2013, and therefore I find the Notice to End Tenancy was valid for those months. The Landlord has leave to apply for a monetary order for January or other rents from 2014, if those rents are still due.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant. This 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 to section 67 in the amount of **\$4,000.00** comprised of \$600.00 in rent owed for October 2013, and \$3,400.00 in rent owed for November and December 2013.

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.

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: April 01, 2014

