



# 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 a Landlord's application 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 which declares that on May 16, 2014 the Landlord served the Tenant with the Notice of Direct Request by registered mail pursuant to section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, I find that the Tenant was deemed served with Notice of Direct Request Proceeding on May 21, 2014.

### 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 the Tenant for unpaid rent?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlord and the Tenant on November 28, 2013 for a tenancy commencing on December 1, 2013. Rent is payable by the Tenant in the amount of \$1,350.00 on the first day of each month;
- A copy of two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notices") both issued on May 6, 2014 with an effective vacancy date of May 16,

2014. The first Notice shows unpaid rent in the amount of \$1,350.00 due on **April 1, 2014** and unpaid utilities in the amount of \$32.94 due on **May 6, 2014**. The second Notice shows unpaid rent in the amount of \$1,350.00 due on **May 1, 2014** and unpaid utilities in the amount of \$32.94 due on **May 6, 2014** (both pages of the 2 page approved Notices were provided as evidence);

- A copy of the Proof of Service document which declares that the Notices were personally served to the Tenant on May 6, 2014 in the presence of a witness who signed the Proof of Service document; and
- The Landlord's Application for Dispute Resolution which was made on May 16, 2014 claiming a monetary amount of **\$2,294.94**. However, in the details section of the application form the Landlord writes that this amount comprises of unpaid rent for both April and May, 2014 in the amount of \$1,350.00 each and \$32.94 for unpaid utilities. The Landlord further writes that the Tenant paid a partial amount of \$500.00 on May 6, 2014 and therefore, the amount outstanding is **\$2,232.94**  $((1,350 + 1,350 + 32.94) - 500)$ .

### Analysis

I have reviewed the documentary evidence and accept that the Tenant was personally served in the presence of a witness with both Notices, which complied with the Act, on May 6, 2014 relating to unpaid rent and utilities due in April and May, 2014.

I accept the evidence before me that the Tenant has failed to dispute the Notices or pay the rent owed on the Notices within the 5 days provided under section 46(4) of the Act. Therefore, 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 Notices. I therefore find that the Landlord is entitled to an Order of Possession.

In relation to the Landlord's monetary claim for unpaid rent, I find that there is a discrepancy in the amount being claimed on the Landlord's application. The amount written in the box for the Monetary Order is \$2,294.94 and the amount broken down in the details section results in an amount of \$2,232.94. Therefore, I am only prepared to award the Landlord the unpaid rent for April and May, 2014, minus the \$500.00 paid by the Tenant on May 6, 2014 as declared in the details section of the Landlord's application. As a result, the Landlord is awarded **\$2,200.00** in unpaid rent.

In relation to the Landlord's monetary claim for unpaid utilities, section 46(6) of the Act states that if a Tenant is required to pay utilities and the utility charges are unpaid more

than 30 days after the Tenant is given a written demand for payment of them, the Landlord may treat the unpaid utility charges as unpaid rent and may give Notice under this section.

The Direct Request Proceedings may **only** be used to claim for **unpaid rent**. In this case the Landlord declares on the Notices that the Tenant was given the written demand letter for the outstanding utilities on May 6, 2014 as required by the Act. However, the Act requires 30 days to pass before the unpaid utilities may be treated as unpaid rent. Therefore, as this period has not passed and the Landlord provided insufficient evidence of the demand letter, I am unable to award the Landlord the unpaid utilities claimed. However, the Landlord is given leave to re-apply for the unpaid utilities.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$2,200.00** in favor of the Landlord pursuant to section 67 of the Act. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 23, 2014

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Residential Tenancy Branch

