



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This matter was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for: damage to the rental unit; unpaid rent or utilities; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and to recover the filing fee from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Tenant failed to appear for the ten minute duration of the hearing and provided no written evidence in advance of the hearing.

As a result, I turned my mind to the service of the paperwork by the Landlord. The Landlord testified that he served a copy of the Application and Notice of Hearing documents by attaching them to the Tenant’s door on May 7, 2014.

Section 89 of the Act determines the methods of service for the Application. In relation to the Landlord’s Application for an Order of Possession, I am able to accept the Landlord’s method of service (by attaching these documents to the Tenant’s door) in accordance with Section 89(2) (d) of the Act. Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days later. Therefore, I find that the Tenant was served with the Landlord’s Application for an Order of Possession on May 10, 2014

However, an Application for a monetary claim cannot be served by attaching it to the door and is limited to the methods stipulated by Section 89(1) of the Act. Therefore, as the Landlord’s monetary Application has not been served to the Tenant in accordance with the Act, I am unable to consider this portion of the Landlord’s Application and I dismiss it with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy was inherited in the summer of 2010 and continued on a month to month basis. No written tenancy agreement is associated with the tenancy. The Landlord holds a \$650.00 security deposit but did not know when this was paid. Rent is payable under the agreement in the amount of \$1,300.00 on the first day of each month.

The Landlord testified that for April, 2014 the Tenant paid only \$293.75 in rent. This left an outstanding balance of \$1,006.25 which the Tenant failed to pay. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 22, 2014, by attaching it to the Tenant's door.

The Notice was provided as evidence for this hearing and shows an expected date of vacancy of May 5, 2014 with an amount of \$1,006.25 outstanding for unpaid rent due on April 1, 2014. The Landlord also provided a Proof of Service document verifying the service of the Notice as evidenced by a signature of a witness. The Landlord testified that this amount remains unpaid as well as rent for May and June, 2014.

Analysis

I have considered the undisputed testimony and evidence provided by the Landlord and I make the following determination.

Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act.

Sections 46(4) and (5) of the Act explain that within five days of a Tenant receiving a Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the effective date of the Notice.

I accept that the Tenant was served with the Notice by attaching it to his door on April 22, 2014, pursuant to Section 88(g) of the Act. As a result, I find that the Tenant was deemed served with the Notice on April 25, 2014 pursuant to Section 90(c) of the Act.

Therefore, the Tenant had until April 30, 2014 to pay the overdue rent or apply to dispute the Notice as required by the Act, neither of which the Tenant did.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, and therefore the Landlord is entitled to an Order of Possession.

### Conclusion

As the effective date of the Notice has now passed, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful in this matter, the Landlord is entitled to recover from the Tenant the **\$50.00 filing fee** for the cost of this Application. This amount may be deducted from the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act.

For the reasons above, the Landlord's Application for a Monetary Order is dismissed **with** leave to re-apply.

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: June 24, 2014

---

Residential Tenancy Branch

