



# 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 July 29, 2014 the Landlord served the Tenant with the Notice of Direct Request by registered mail to the Tenant's rental suite, pursuant to Section 89(1) (c) of the Act.

The Landlord provided a copy of the Canada Post tracking receipt 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 reason alone as grounds for a review. As a result, I find that the Tenant was deemed served with Notice of Direct Request Proceeding on August 3, 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 for unpaid rent?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Landlord and Tenant on April 19, 2011 for a tenancy commencing on May 1, 2011. The tenancy agreement establishes rent payable in the amount of \$805.00 on the first day of each month;

- An income journal which shows the rent payment history during the course of the tenancy. These documents indicate that the rent payable in July, 2012 was \$830.00;
- A Notice of Rent Increase, dated April 18, 2013 showing the rent at the time was \$830.00 and was being increased by \$31.00 to \$861.00, payable by the Tenant starting on August 1, 2013;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 3, 2014 with an effective vacancy date of July 13, 2014 due to \$861.00 in unpaid rent due on July 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on July 3, 2014 by attaching it to the Tenant's door with a witness who signed the document to verify this method of service;
- The Landlord's Application for Dispute Resolution made on July 29, 2014 claiming unpaid rent in the amount of \$861.00 for July, 2014.

### Analysis

While the Landlord did not submit a Notice of Rent Increase showing the rent payable under the tenancy agreement had changed from \$805.00 to \$830.00, I find that there is sufficient evidence that the rent amount payable in July, 2013 was \$830.00 based on the income journal provided by the Landlord. I also accept that the rent amount changed from \$830.00 to \$861.00 through a Notice of Rent Increase issued to the Tenant on April 18, 2013 and that the new amount was payable by August 1, 2013; this is further supported by the income journal.

I have reviewed the remainder of the documentary evidence and I accept that the Tenant was served with the Notice on July 3, 2014, which complied with the Act, by attaching it to the Tenant's door with a witness who verified this method of service.

Section 90(c) of the Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenant was deemed to be served the Notice on July 6, 2014 and the effective date of vacancy on the Notice is automatically corrected to July 16, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant failed to dispute the Notice or pay the outstanding rent on the Notice within the five 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 corrected vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

### 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 **\$861.00** in favor of the Landlord pursuant to Section 67 of the Act. 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 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: August 05, 2014