



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOLE APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DIRECT REQUEST DECISION**

Dispute Codes: OPR, MNR

### Introduction

This application proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act. The landlord seeks an Order of Possession and a monetary order for rental arrears based on a 10-Day Notice to End Tenancy for Unpaid Rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 9, 2014 at 10:00 a.m., the landlord served the tenant with the Notice of Direct Request Proceeding in person.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent pursuant to sections 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 and Proof of Service of the Ten-Day Notice, verifying service to the tenant,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 1, 2013 for \$1,250.00 in rental arrears, and
- A copy of a residential tenancy agreement, confirming that the rent is \$1,250.00 per month, due on the first day of each month.

According to the 10-Day Notice to End Tenancy for Unpaid Rent the landlord indicates that the tenant had failed to pay \$1,250.00 rent owed for the month of July *“that was due on 30/06/2014”* and the landlord is seeking compensation in this amount and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

### Analysis

Based on the evidence before me, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by serving it personally on the tenant on July 1, 2014.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on July 1, 2014 and the Notice indicates that the tenant is in arrears for rent that was properly due on the 30<sup>th</sup> day of July, 2014. (My emphasis)

However, the tenancy agreement submitted into evidence by the landlord states in paragraph 6::

*“RENT AND FEES: The tenant will pay to the landlord in advance on or before the first day of the month: 1250.00.” (My emphasis)*

Given the above, I find that the 10-Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant prior to the due date of the rent, which is stated to be the 1<sup>st</sup> day of each month according to the tenancy agreement. Therefore, I find that the tenant's rent would not be in arrears until the second day of the month.

Accordingly, I find that the 10-Day Notice to End Tenancy for Unpaid Rent dated July 1, 2014 is not valid nor enforceable.

Given the above, I hereby dismiss the landlord's application without leave to reapply.

### Conclusion

The landlord is not successful in the application and the application is dismissed, as the 10-Day Notice to End Tenancy for Unpaid Rent was issued on a date prior to the date that rent would be in arrears.

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: July 15, 2014

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Residential Tenancy Branch

