



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPR & MNR

### Introduction

This matter was conducted 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 due to unpaid rent.

The Direct Request process is a mechanism that allows the landlord to apply for an expedited decision without a participatory hearing. As a result, the landlord must follow and submit documentation **exactly** as the *Act* prescribes and there can be no omissions or deficiencies within the written submissions that are left open to interpretation or inference.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 21, 2014 the landlord served the female tenant with the Notice of Direct Request Proceeding by hand. I have no evidence before me that the male tenant was also served.

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

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for female tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and female tenant on November 01, 2010 for a tenancy beginning November 01, 2010 for the monthly rent of \$585.00 due on the 1st of the month; The landlord submits that the male tenant joined the tenancy on January 01, 2011 and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 03, 2014 with an effective vacancy date of July 16, 2014 due to \$1,270.10 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the month of June leaving an unpaid balance of \$585.10 and an unpaid amount for July of \$635.00 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants' rental unit on July 03, 2014 and therefore is deemed served three days later.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy as declared by the landlord. The Notice is deemed to have been received by the tenants on July 06, 2014. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Sections 88 and 89 of the *Act* determine the method of service for documents. The landlord has applied for a Monetary Order which requires that the landlord serve both of the tenants as set out under Section 89(1). In this case only the female tenant has been personally served with the Notice of Direct Request Proceeding documents. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. Therefore, I find that the request for a Monetary Order against both of the tenants must be amended to include only the tenant who has been properly served with Notice of this Proceeding. As the service of the Notice of Direct Request Proceeding documents upon the male tenant has not been proven, as required by Section 89(1) of the *Act*, the landlord's monetary claim against the male tenant is dismissed without leave to reapply.

However, the tenancy agreement indicates rent is \$585.00 per month whereas the landlord's application indicates rent payable \$635.00 for June and July. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement or other evidence to substantiate the amount of rent claimed by the landlord.

As the landlord has provided insufficient evidence to prove that the rent has been legally increased to \$635.00 a month I must limit the landlord's claim to the amount rent shown on the tenancy agreement for June and July. As the landlord has indicated that the tenants paid an amount of \$48.68 in June; I find the tenants owe rent for June of \$536.32 and \$585.00 for July.

Conclusion

I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*, effective **two days after service on the tenants**. This Order must be served on the tenants and 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 of the *Act*, in the amount of **\$1,121.32** for rent owed. This Order must be served on the female 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: July 25, 2014

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Residential Tenancy Branch

