



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Check Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This matter proceeded 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 for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 31, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

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

### Issues to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order for unpaid utilities?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding;
- A copy of a residential tenancy agreement which was signed by the parties on March 3, 2014, indicating that the tenant is obligated to pay 70% of the monthly utilities;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which the landlord served on the tenant on July 21, 2014 for \$249.43 in unpaid utilities due for the period of March 11 – May 8;
- A written demand letter for unpaid utilities dated May 21, 2014 requiring the tenants to pay the outstanding amount within 30 days, and
- A copy of the Proof of Service of the Notice to End Tenancy showing that the landlord served the notice to end tenancy on the tenant by having the tenant sign and acknowledge personal service.

The Notice restates section 46(4) of the Act which provides that the tenant had five days to pay the utility arrears in full or apply for Dispute Resolution. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service and the landlord alleged that the tenant did not pay the utility arrears.

Section 46(6) of the Act states:

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) 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.

### Analysis

I find that the tenant received the notice to end tenancy on July 21, 2014. I accept the landlord's undisputed evidence and I find that the tenant did not pay the utilities arrears and did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence before me that the tenant has failed to pay \$249.43 in utilities charges for the period of March 11 – May 8. I find that the landlord is entitled to recover the arrears and I grant the landlord a monetary order for \$249.43.

### Conclusion

I grant the landlord an order of possession and a monetary order under section 67 for \$249.43. This order may be filed in the Small Claims Division of the Provincial Court 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 13, 2014

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Residential Tenancy Branch

