



# Dispute Resolution Services

Page: 1

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 an application made 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 September 4, 2014 the Landlord served the Tenant with the Notice of Direct Request Proceeding 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 of this decision. As a result, I find the Tenant was deemed served with Notice of Direct Request Proceeding on September 9, 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 against the Tenant?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Tenant and the Landlord on August 1, 2013 for a tenancy commencing on the same day. The

monthly rent on the agreement is \$575.00 which is payable by the Tenant on the first day of each month;

- A copy of the two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 14, 2014 with an effective vacancy date of July 14, 2014 due to \$2,240.00 in unpaid rent due on July 1, 2014. The Notice indicates that the amount of rent outstanding is \$550.00 for the months of April, May, June and July;
- A copy of the Proof of Service of the Notice which declares that the Notice was served on July 14, 2014 by attaching it to the Tenant's door with a witness who signed the document verifying this method of service;
- The Landlord's Application for Dispute Resolution which was made on August 29, 2014 claiming \$2,240.00 in outstanding rent. The Landlord failed to select the box claiming for a monetary amount and failed to complete the monetary claim section of the application in full, but writes on the application '2240'; and
- The Monetary Order Worksheet which indicates that the Landlord is claiming unpaid rent for May, June and July in the amount of \$550.00 plus a \$20.00 unknown charge and \$550.00 plus \$20.00 for August utilities.

### Analysis

I have reviewed the documentary evidence and I accept that the Landlord served the Tenant with a Notice that complied with the Act, by attaching it to the Tenant's door with a witness on July 14, 2014.

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 17, 2014 and the effective vacancy date on the Notice is corrected to July 27, 2014 pursuant to Section 53 of the Act.

I accept the evidence before me that the Tenant has failed to dispute the Notice and I am satisfied that the Tenant has failed to pay rent 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 date of the Notice and the Landlord is therefore entitled to an Order of Possession for unpaid rent.

However, in relation to the monetary claim of \$2,240.00, I find that there are a number of discrepancies in the amount being claimed through the written evidence provided.

The Landlord writes on the Notice that there is \$550.00 outstanding for April, May, June and July but claims on the Monetary Order Worksheet that rent is outstanding for May, June and July. However, the amount of rent payable under the tenancy agreement is \$575.00; The Landlord claims rent has not been paid by the Tenant in the amount of \$550.00 without any explanation as to the difference in these amounts. Furthermore, the Landlord claims for unpaid utilities for August, 2014 without providing written evidence to support this amount. In addition the Landlord has failed to satisfactorily complete the monetary claim portion of the application.

While I am satisfied that the Tenant has failed to pay rent, based on the above discrepancies, I am unable to determine the exact amount of rent outstanding and for which months this relates to and whether this relates to unpaid rent or utilities. Therefore, I am unable to grant the Landlord 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 enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

For the above reasons, the Landlord's claim for unpaid rent is dismissed. However, the Landlord is given leave to re-apply for the unpaid rent and utilities and should ensure that sufficient evidence is provided to support a monetary claim for these amounts.

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: September 10, 2014

---

Residential Tenancy Branch

