



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR MNR

### 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 for unpaid rent and a monetary order of unpaid rent.

The landlord submitted a signed proof of service of the notice of direct request proceeding which declares that on August 22, 2014, the landlord served the tenant with the notice of direct request proceeding via posting to the tenant's door at 4:30 p.m.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the direct request proceeding documents as of August 22, 2014.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on November 5, 2012, indicating a monthly rent of \$775.00 which was due on the first day of the month; and

- A copy of a 10 day notice to end tenancy for unpaid rent which was dated on July 31, 2014, and served by posting to the tenant's door on July 31, 2014 at 12:20 p.m., with a stated effective vacancy date of August 13, 2014, for \$775.00 in unpaid rent due July 1, 2014.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed and was served the 10 day notice to end tenancy for unpaid rent by posting to the tenant's door on July 31, 2014 at 12:20 p.m., which was witnessed by third party, K.S. on July 31, 2014. Pursuant to section 90 of the *Act*, documents posted to the door are deemed served three days after they are posted. As a result, the 10 day notice was deemed served on August 3, 2014.

The notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy within five days from the date of service.

### Analysis

I have reviewed all documentary evidence and accept that the tenant have been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the notice. Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the notice, August 13, 2014. Therefore, I find that the landlord is entitled to an order of possession for unpaid rent.

Regarding the landlord's monetary claim, the landlord posted the notice of direct request proceeding for the tenant on the tenant's door which is not an approved method of service when requesting a Monetary Order. This information is clearly indicated on the Proof of Service document completed by the landlord, which indicates that when attaching a copy on the door, **"Do not use this method of service if requesting a Monetary Order"**. As a result, I dismiss the landlord's monetary claim **with leave to reapply**, as the notice of direct request proceeding was not served in an approved method when requesting a Monetary Order.

### Conclusion

I find that the landlord is entitled to an order of possession effective **two (2) days after service** on the tenants and this order may be filed in the Supreme Court and enforced as an order of that court.

The landlord's request for a Monetary Order is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 5, 2014

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Residential Tenancy Branch

