



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 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 13, 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 5 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 rent?

### 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 February 24 and 25, 2013, indicating that the tenant is obligated to pay \$850.00 in rent in advance on the first day of the month;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") which the landlord served on the tenant on August 5, 2014 for \$950.00 in unpaid rent due in the month of August; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice on the tenant by posting the Notice to the door of the rental unit.

Section 90 of the Act provides that because the Notice was served by posting, the tenant is deemed to have received the Notice 3 days later on August 8, 2014.

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

### Analysis

The landlord has alleged that the tenant failed to pay \$950.00 in rent for the month of August, yet the tenancy agreement shows that the tenant was only obligated to pay \$850.00 in rent each month. The landlord provided no indication that the parties had agreed in writing to increase the rent beyond the amount allowed under the Residential Tenancy Regulations and provided no bookkeeping records to show that there were rental arrears added to the \$850.00 in rent owed for the month of August.

The landlord's application and evidence appear to indicate that the landlord expected the tenant to pay \$100.00 more each month in rent than she is statutorily obligated to pay. I am not persuaded on the balance of probabilities that any rent is outstanding for August. If the landlord has long been in the habit of collecting more rent than she is entitled to, the tenant could well be in a credit position, having overpaid 9 months of rent.

Because I cannot find that rent is outstanding, I dismiss **without** leave to reapply the application for an order of possession based on the Notice served on August 5, 2014. If there is indeed rent still outstanding for August, the landlord may serve a new notice to end tenancy reflecting the accurate amount outstanding. If the landlord wishes to pursue an order of possession for unpaid rent in an amount than that reflected on the tenancy agreement, the landlord should apply for a participatory hearing and be prepared to present evidence showing how and when the amount of rent changed.

As there is a possibility that rent is outstanding for August, I dismiss the monetary claim **with** leave to reapply.

### Conclusion

The application for an order of possession is dismissed without leave to reapply and the claim for a monetary order is dismissed with leave to reapply.

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 19, 2014

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Residential Tenancy Branch

