



# 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 a Landlord's Application 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 which declares that on September 26, 2014 the Landlord served the Tenant with the Notice of Direct Request 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. As a result, I find the Tenant was deemed served with Notice of Direct Request Proceeding on October 1, 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 and utilities?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlord on February 19, 2014 for a tenancy commencing on March 1, 2014. The tenancy agreement establishes rent payable in the amount of \$875.00 on the first day of each month and 2/3 of the hydro and gas utilities.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated September 4, 2014 with an effective vacancy date of September 14, 2014 due to \$875.00 for unpaid rent and \$57.33 for unpaid utilities.
- A copy of the Proof of Service of the Notice which shows the Landlord served the Notice to the Tenant on September 4, 2014 by attaching it to the Tenant's door with a witness who signed the document to verify this method of service;
- The Landlord's Application for Dispute Resolution made on September 25, 2014 claiming \$332.32; the Monetary Order Worksheet explains that the Tenant paid \$600.00 on September 12, 2014 and that the outstanding amount of rent that is unpaid is \$275.00 as well as \$57.33 for unpaid utilities; and
- A copy of a receipt issued to the Tenant for the amount of \$600.00 paid by the Tenant on September 12, 2014. The receipt shows that it was issued to the Tenant for use and occupancy only and that this was partial payment.

### Analysis

I have reviewed the documentary evidence and I accept that the Tenant was served with the Notice, which complied with the Act, on September 4, 2014 by attaching it to the Tenant's door with a witness who verified this method of service. Section 90(c) of 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 September 7, 2014 and the effective date of vacancy on the Notice is automatically corrected to September 17, 2014 pursuant to Section 53 of the Act.

I accept the Landlord's written evidence that the Tenant paid a partial amount of rent in the amount of \$600.00 on September 12, 2014 and therefore the outstanding balance of rent for the month of September, 2014 was \$275.00. I also find that the Tenant was issued a receipt for this payment which shows that the partial payment was accepted by the Landlord for use and occupancy only. Based on this evidence as well as the Tenant only making a partial payment for the outstanding amount, I find that the tenancy has not been re-instated.

I accept the evidence before me that the Tenant failed to dispute the Notice or pay the outstanding rent on the Notice 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 vacancy date of the

Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for the outstanding unpaid **rent** in the amount of **\$275.00**.

In relation to the Landlord's monetary claim for unpaid utilities, Section 46(6) of the Act states that if a Tenant is required to pay utilities and 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. The Landlord writes on the Monetary Order Worksheet that the Tenant was provided with a written demand letter on August 28, 2014 for the Fortis and Telus utility bills for a total amount of \$57.33.

The Monetary Order Worksheet specifically requests the Landlord to provide copies of the bills and demand letters. However, the Landlord has failed to provide copies of the bills and the demand letter relating to August 28, 2014. Furthermore, the Landlord claims for outstanding Telus utilities when the tenancy agreement only provides for gas and hydro utilities. Based on the foregoing, I am not willing to deal with the Landlord's request for unpaid utilities in this non participatory hearing, but provide leave to re-apply for this portion of the Landlord's monetary claim.

### 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 filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$275.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord's Application for unpaid utilities is dismissed with leave to re-apply.

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: October 03, 2014

---

Residential Tenancy Branch

