



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 24, 2014 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 3, 2014 for a 6 month fixed term tenancy beginning on May 1, 2014 for the monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month and a security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 25, 2014 with an effective vacancy date of August 6, 2014 due to \$1,100.00 in unpaid rent and \$1,100.00 in unpaid utilities following a written demand made on August 1, 2014.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of July 2014 and utilities that the landlord provided a written demand on August 1, 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on August 25, 2014 at 7:10 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork all documents submitted must be complete and clear.

In the case before me it is unclear as to why the landlord would have issued a 10 Day Notice to End Tenancy for Unpaid Rent on August 25, 2014 with an effective date three weeks prior to the day it was issued. It is also unclear as to why the landlord would have issued a notice to end tenancy for unpaid utilities when the tenancy agreement does not require the tenant to pay the landlord utilities.

While the Notice to End Tenancy indicates the tenant failed to pay rent for July 2014 in the amount of \$1,100.00 and utilities in the amount of \$1,100.00 after a written demand was made on August 1, 2014 it is not clear from the Monetary Order Worksheet what payments were made to reduce the amount sought by the landlord to \$1,100.00 and when any payments were made to the landlord. Further if payments were made there is no evidence in the landlord's Application if a receipt for use and occupancy was issued or if the landlord has reinstated the tenancy.

Conclusion

Based on the above, I find the landlord's Application, as submitted, is not suitable to be adjudicated through the Direct Request process and I dismiss it with leave to reapply either through the participatory hearing process or through the Direct Request process if the landlord can provide complete information and evidence to support his Application without the need for an arbitrator to question either of the parties.

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 02, 2014

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Residential Tenancy Branch

