



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted in response to a Landlord's Application for Direct Request for an Order of Possession and a Monetary Order for unpaid rent, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act").

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding for each Tenant. These declare that on January 23, 2015 the Landlord's agent served each Tenant with the Notice of Direct Request by registered mail, pursuant to Section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking receipts 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. As a result, I find that the Tenants were deemed served with the documents on January 28, 2015.

### 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?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Landlord and the Tenants on August 31, 2014 for a tenancy commencing on September 1, 2014. The agreement establishes that rent is payable in the amount of \$900.00 on the first of each month;
- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on January 12, 2015 with an effective vacancy date of January 22, 2015 due to \$863.00 in unpaid rent due on January 1, 2015;
- A copy of the Proof of Service of the Notice which shows the Landlord's agent served the Notice to the Tenants on January 12, 2015 by attaching it to the Tenants'

door with a witness who signed the Proof of Service document verifying this method of service; and

- The Application for Direct Request made on January 21, 2015 and the Monetary Order Worksheet claiming unpaid rent for January, 2015 in the amount of \$863.00.

### Analysis

I have reviewed the evidence and I accept that the Tenants were served with the Notice, which complied with the Act, on January 12, 2015 by attaching it to their door with a witness. 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 Tenants were deemed to be served the Notice on January 15, 2015 and the date of vacancy on the Notice is automatically corrected to January 25, 2015 pursuant to Section 53 of the Act.

Even though the Landlord has not provided any explanation as to why a reduced amount of rent is being sought in this Application from the rent payable under the tenancy agreement, I accept the evidence that the Tenants 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 Tenants are 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 unpaid rent.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **two days after service on the Tenants**. 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 **\$863.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: January 29, 2015

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Residential Tenancy Branch

