

# **Dispute Resolution Services**

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Residential Tenancy Branch
Office of Housing and Construction Standards

#### **DECISION**

<u>Dispute Codes</u> OPR, MNR

#### <u>Introduction</u>

This matter proceeded by way of an *ex parte* 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 based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on October 09, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign the respective Proof of Service of the Notice of Direct Request Proceedings for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89, I find that the tenants have been duly served with the Direct Request Proceeding documents on October 09, 2015, the day it was personally served to them.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the tenants on August 30, 2015, indicating a monthly rent of \$700.00, due on the first day of the

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month for a tenancy commencing on September 01, 2015. The landlord has not signed the tenancy agreement but a tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord's failure to sign their own agreement does not invalidate it;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 02, 2015, and personally handed to Tenant B.H. on October 02, 2015, with a stated effective vacancy date of October 12, 2015, for \$700.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant B.H. at 11:00 a.m. on October 02, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

#### <u>Analysis</u>

I have reviewed all documentary evidence and in accordance with sections 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on October 02, 2015.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice is October 07, 2015. I further find that the landlord applied for dispute resolution on October 07, 2015, the last day that the tenant had to dispute the 10 Day Notice.

The earliest date that the landlord could have applied for dispute resolution is October 08, 2015, meaning that the landlord made their application for dispute resolution one day too early.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of October 02, 2015, with leave to reapply.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a monetary Order with leave to reapply.

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## **Conclusion**

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 02, 2015 is dismissed, with leave to reapply.

I dismiss the landlord's application for a monetary Order 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: October 13, 2015

Residential Tenancy Branch