



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 14, 2016, the landlord served the tenant by leaving the Notice with Person M.R., an adult who resides with the tenant. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on October 14, 2016, in consideration of the Order of Possession only.

### 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 29, 2016, indicating a monthly rent in the amount of

\$1,200.00, which states that rent is due on the 31st day of the month for a tenancy commencing on October 01, 2016;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$1,000.00 of the \$1,200.00 identified as owing in the 10 Day Notice was paid on October 08, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 08, 2016, and left with an adult who resides with the tenant on October 08, 2016, for \$1,200.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left with an adult who resides with the tenant at 10:55 a.m. on October 08, 2016. 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.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on October 08, 2016.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the 31<sup>st</sup> day of every month. I further find that the landlord has issued the 10 Day Notice on October 08, 2016, a day that is before the day in the month that the monthly rent is due, which is not in accordance with section 46 of the *Act*.

As I find that the landlord has not complied with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenant, the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of October 08, 2016, is dismissed without leave to reapply.

The 10 Day Notice of October 08, 2016, is cancelled and of no force or effect.

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

**Conclusion**

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of October 08, 2016 is dismissed, without leave to reapply.

The 10 Day Notice of October 08, 2016, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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 25, 2016

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Residential Tenancy Branch