



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This participatory hearing was scheduled pursuant to a decision made by an Adjudicator considering the landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure. The landlord was ordered to serve the tenant with a Notice of Reconvened Hearing, along with all other required documents, in a manner that complies with section 89 of the Act. The landlord testified that he served the Notice of Reconvened Hearing by posting it on the tenant's door on May 12, 2017. The landlord confirmed that no other hearing documents were served upon the tenant on the door, or otherwise, except for the Application for Dispute Resolution and submitted documents sent to the tenant by registered mail on May 1, 2017. In the absence of any evidence to the contrary, I accepted the landlord's testimony that the Notice of Reconvened Hearing was posted to the tenant's door on May 12, 2017.

Section 89(2) of the Act provides that posting on a rental unit door is a permissible method of service where an applicant seeks an Order of Possession. However, where an applicant seeks a Monetary Order, section 89(1) of the Act provides that service must be done in person or by registered mail. Accordingly, I proceed to consider whether the landlord is entitled to an Order of Possession and I dismiss the landlord's monetary claim with leave to reapply.

As seen in the Interim Decision of the Adjudicator, the landlord had supplied a copy of the tenancy agreement to the Residential Tenancy Branch after the May 1, 2017 mailing and this participatory hearing was ordered to determine the details of the landlord's application. Since it unclear as to whether the tenant received a copy of the tenancy agreement, I relied upon oral testimony as to the terms of tenancy.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy started in June 2006 and the tenant paid a security deposit of \$270.00. When the tenancy formed the monthly rent was set at \$540.00 and was payable on the first day of every month. The landlord testified that the monthly rent has increased since then and is currently at \$675.00 per month.

The landlord testified that the tenant failed to pay rent that was due since March 2017 onwards. On April 16, 2017 a 10 day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served upon the tenant in person. The 10 Day Notice indicates rent of \$1,325.00 was outstanding as of April 1, 2017 and has a stated effective date of April 26, 2017. The landlord testified that the tenant did not pay the outstanding rent and did not file to dispute the 10 Day Notice.

Documentary evidence provided by the landlord included a copy of the 10 Day Notice; a Proof of Service for the 10 Day Notice signed by the landlord and a witness; and registered mail receipt for sending the Application for Dispute Resolution by Direct Request to the tenant via registered mail on May 1, 2017.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay all of the rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the unopposed evidence before me that the landlord personally served the tenant with a 10 Day Notice to End Tenancy on April 16, 2017. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day

Notice I find the tenant is conclusively presumed to have accepted that the tenancy would end on April 26, 2017. Accordingly, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord's monetary claim is dismissed 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: June 20, 2017

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Residential Tenancy Branch