



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes OPR, MNR, MNSD, FF

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the 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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 13, 2009 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act considers documents served via mail to be received on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on February 12, 2009 for a one year fixed term tenancy beginning February 15, 2009 for the monthly rent of \$1,000.00 due on the 1st of the month and a security deposit of \$500.00 paid on February 15, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 2, 2009 with an effective vacancy date of December 14, 2009 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed for the month of December 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenant's rental unit on December 2, 2009 at 2:30 p.m. The landlord has confirmed in writing that the service was witnessed by a third party.

The Notice states that the tenant failed to pay rent in the amount of \$1000.00 due on December 1, 2009. However, the landlord's Application for Dispute Resolution states the tenant owed \$500.00 in rent for December 2009, as well as, fees for a lost key fob; locksmith; cleaning; and hydro.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy for unpaid rent by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Rent is defined, under the *Act*, to be:

“...money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

1. A security deposit;
2. A pet damage deposit;
3. A fee prescribed under 97 (2) (k) [regulations in relation to fees];”

The Residential Tenancy Regulations have defined fees to include refundable fees for keys or access devices and non-refundable fees for replacing keys and access devices; additional keys or access devices; service fees from financial institutions for return of the tenant's cheque; an administration fee for late payment and fees for services requested by the tenant that are not provided under the tenancy agreement.

As such, I find the 10 Day Notice to End Tenancy for Unpaid Rent includes fees for items that are not considered rent and therefore the Notice is ineffective.

### Conclusion

As a result of my finding, I dismiss the landlord's application without 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: December 23, 2009.

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Dispute Resolution Officer