



# 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 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.

The Landlord submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on December 29, 2011, the Landlord's Agent served Tenant DH by registered mail with the Notice of Direct Request Proceeding. The Landlord provided a copies of the registered mail receipt and tracking number as proof of the service on Tenant DH.

Section 90 of the Act determines that a document served in this manner is deemed to have been served the same day.

Based on the written submissions of the Landlord, I find that Tenant DH has been duly served with the Direct Request Proceedings documents.

### Preliminary Matter(s)

The tenancy agreement provided by the Landlord indicates that there are two tenants on the agreement, Tenant DH and Tenant BD. The Landlord's written submission indicates that only Tenant DH remains at the rental unit and that Tenant BD has already moved out the Landlord is seeking an order of possession for the rental unit and he is seeking a monetary order against Tenant DH. As a result I find it appropriate to only refer to Tenant DH in the balance of this decision.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to sections 46, 55 and 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 on the Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 26, 2011, indicating a monthly rent of \$1875.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 17, 2011 with a stated effective vacancy date of December 26, 2011, for \$1875.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant had failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on December 17, 2011 at 11:15 A.M. The Landlord provided evidence that this was witnessed by a third party. A Notice served in this manner is deemed to have been served by December 20, 2011, which is three days from the date posted.

The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was December 25, 2011. Although the Landlord indicated that the Tenant had until December 26, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to December 30, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline.

The Landlord's Application for Dispute Resolution and the 10 Day Notice indicates that they are seeking \$1875.00 in unpaid rent.

### Analysis

I have reviewed all documentary evidence and accept that the Tenant has been served with the 10 Day Notice to End Tenancy as declared by the Landlord.

I accept the evidence before me that the Tenant has failed to pay the rent owed in the amount of \$1875.00 within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on December 30, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession and a monetary order for unpaid rent.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

I find that the Landlord is entitled to monetary order pursuant to section 67 in the amount of **\$1875.00** comprised of rent owed.

The orders accompany the Landlord's copy of this decision. The orders must be served on the Tenant and may be filed in the Supreme 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 05, 2012.

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Residential Tenancy Branch