



# 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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 20, 2012 the female landlord handed both tenants the Notice of Direct Request Proceeding.

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

### Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlords 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 landlord and the tenants on November 11, 2011, indicating a monthly rent of \$875.00; due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) with no stated effective vacancy date, for \$1,915.00 in unpaid rent and \$422.00 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice by posting it on the tenants' door at 1:23 p.m. on February 9, 2012. Section 90 of the *Act* deems the tenants were served on the 3<sup>rd</sup> day after this posting, February 12, 2012.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

### Analysis

I have reviewed all documentary evidence.

Although the female landlord signed the 10 Day Notice, she did not place an effective date by which the tenants had to vacate the rental unit on that Notice. Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [form and content of notice to end tenancy]. Section 52(a) of the *Act* reads in part as follows:

52     *In order to be effective, a notice to end tenancy must be in writing and must...*  
          *(c) state the effective date of the notice;...*

Since the landlords failed to identify the effective date of the 10 Day Notice, the landlords have not complied with the statutory requirement established under section 52(a) of the *Act*. I find that this error in the landlords’ 10 Day Notice invalidates that Notice. The landlords’ 10 Day Notice is of no effect. I dismiss the landlords’ 10 Day Notice without leave to reapply. If the landlords intend to end this tenancy for non-payment of rent or utilities, they will need to issue a new valid 10 Day Notice to the tenants.

I now turn to the landlords’ application for a monetary order. The landlords have not provided any details regarding their claim for a monetary order other than their identification of \$1,915.00 as owing as of the date of their February 9, 2012 service of the 10 Day Notice to the tenants. In their original application for dispute resolution, the landlords also sought an amount for unpaid utilities which they removed from their application when they decided to seek a decision on this matter through the direct request process. They did not provide any details as to how they arrived at the \$1,915.00 in unpaid rent, nor did they provide details regarding the tenants’ recent rental payment history.

I find that the landlords have not submitted sufficient evidence to enable them to obtain a monetary Order through a direct request proceeding. I dismiss this portion of the landlords’ application with leave to reapply.

### Conclusion

I dismiss the landlord’s application for an Order of Possession based on the existing 10 Day Notice without 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: February 24, 2012

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Residential Tenancy Branch