# Dispute Resolution Services

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 and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding; it declared that on July 12, 2013, the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail.

Pursuant to Section 90 of the *Residential Tenancy Act* a document served in this manner is deemed to have been served five days later.

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

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Background and Evidence

The landlord submitted the following documents:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;

- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2013, providing for a monthly rent of $1,200.00.  The tenancy agreement contains two contradictory provisions with regard to the payment of

rent. One provision provides for rent to be paid on a variable schedule coincidental with the date of issue of government assistance cheques, and the second provides that rent will be paid on the last day of each month.; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 28, 2013 with a stated effective vacancy date of June 7, 2013 for $1,200.00 in unpaid rent said to be due on May 22, 2013.

Documents filed by the landlord established that the tenant was personally served the 10 Day Notice to End Tenancy for Unpaid Rent on May 28, 2013.

Based on the provision in the tenancy agreement that calls for rent to be paid on the last day of the month, rent demanded by the Notice was not due to be paid until May 31, 2013.

Analysis

There are two inconsistent provisions in the tenancy agreement with respect to the date that rent must be paid. The *contra proferentem* principle of contractual interpretation requires that, in the case of ambiguity a contractual provision drafted by the landlord should be interpreted in the manner most favourable to the tenant; applying that principle, I find that no rent was due to the landlord on May 28, 2013 when the Notice to End Tenancy was served on the tenant. The Notice to End Tenancy is therefore void and unenforceable.

The Residential Tenancy Policy guideline with respect to Direct Requests provides that:

> The Residential Tenancy Branch may dismiss, without leave to reapply, an application made through the Direct Request process when a landlord fails to prove their claim or the evidence indicates the landlord would not be successful in any event. For example, when there is an error which invalidates the 10-Day Notice to End Tenancy. In this example, the landlord would have to issue a new valid 10-Day Notice to End Tenancy. If the tenant did not respond to the new valid notice, the landlord could submit a new application through the direct request or conventional dispute resolution process.

Conclusion

I have found that the 10 day Notice to End Tenancy is invalid. Pursuant to the quoted policy guideline provision, the landlord's application is dismissed without leave to

reapply.  If there is rent still owed, the landlord may choose to issue a new Notice to End Tenancy with a valid due date for the rental payment.

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: July 22, 2013

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Residential Tenancy Branch