



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted in response to a Landlord's Application for Direct Request for an Order of Possession and a Monetary Order for unpaid rent, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act").

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 26, 2014 the Landlord's agent served each Tenant with the Notice of Direct Request by registered mail, pursuant to Section 89(1) (c) of the Act.

The Landlord provided a copy of the Canada Post tracking receipts as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this reason alone as grounds for a review. As a result, I find that the Tenants were deemed served with the documents on December 1, 2014.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Has the Landlord established a monetary claim for unpaid rent?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the Landlord and one of the Tenants for a tenancy commencing on August 1, 2014. The tenancy agreement establishes that rent is payable in the amount of \$1,180.00 on or before the first calendar day of each month;

- A copy of a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on November 12, 2014. The Notice has an effective vacancy date of November 25, 2014 due to \$2,360.00 that was payable on November 1, 2014;
- A copy of the Proof of Service of the Notice which shows the Landlord's agent served the Notice to the Tenants on November 12, 2014 by attaching it to the Tenants' door with a witness who signed the Proof of Service document verifying this method of service;
- The Application for Direct Request made on November 26, 2014 claiming unpaid rent for November, 2014 in the amount of \$1,180.00; and
- The Monetary Order Worksheet which shows that the Tenant was in rental arrears for unpaid rent for October and November, 2014 in the amount of \$2,360.00. However, the Tenant made a payment of \$1,180.00 on November 17, 2014 and was issued with a receipt indicating that payment was accepted for use and occupancy only.

### Analysis

I have reviewed the evidence and I accept that the Tenants were served with the Notice, which complied with the Act, on November 12, 2014 by attaching it to their door with a witness. Section 90(c) of the Act states that documents served this way are deemed to have been received three days after being attached to the door. Therefore, I find that the Tenants were deemed to be served the Notice on November 15, 2014.

I also find that by making a partial payment of rent in the amount of \$1,180.00 within the five days provided under Section 46(4) of the Act, was not sufficient to re-instate the tenancy. This is further supported by the Landlord's receipt for this partial payment indicating that it was being accepted for use and occupancy only. As a result, I find that the Tenants failed to dispute the Notice or pay the **full** amount of rent outstanding on the Notice as required by the Act.

Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the vacancy date of the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent claimed.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$1,180.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that 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: December 03, 2014

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Residential Tenancy Branch

