



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VERNON MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent or utilities, to keep the Tenant's security deposit, and to recover the filing fee for the cost of making the Application.

An agent for the company named on the Application (the "Landlord") appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. The Tenant failed to appear for the 16 minute duration of the hearing and provided no written evidence in advance of the hearing.

As a result, I turned my mind to the service of the paperwork by the Landlord. The Landlord testified that a copy of the Application and Notice of Hearing documents (the "hearing package") were served to the Tenant by attaching them to the Tenant's door on November 21, 2014.

Section 89 of the *Residential Tenancy Act* (the "Act") determines the methods of service for the hearing package. In relation to the Landlord's Application for an Order of Possession, I am able to accept the Landlord's method of service in accordance with Section 89(2) (d) of the Act.

Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days after being attached. Therefore, based on the evidence before me, I find that the Tenant was served with the Landlord's Application for an Order of Possession on November 24, 2014.

However, an Application for a monetary claim cannot be served by attaching it to the Tenant's door and is limited to the methods stipulated by Section 89(1) of the Act. Therefore, as the Landlord's monetary Application has not been served to the Tenant in

accordance with the Act, I am unable to consider this portion of the Landlord's Application and I dismiss it with leave to reapply.

As a result, I continued to hear the Landlord's undisputed evidence in relation to the Order of Possession.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

The Landlord testified that he inherited this tenancy on June 1, 2009 on a month to month basis. A written tenancy agreement was completed and rent was established payable by the Tenant in the amount of \$790.00 on the first day of each month.

The Landlord testified that the Tenant only made a partial rent payment for October, 2014 rent and did not pay any rent for November, 2014. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on November 5, 2014. The Notice, which was provided in written evidence, was attached to the Tenant's door and shows an expected date of vacancy of November 17, 2014, due to \$1,390.00 of unpaid rent due on November 1, 2014.

The Notice was served in the presence of a witness who signed a Proof of Service document verifying this method of service.

The Landlord testified that the Tenant did make a partial payment of rent on November 5, 2014 but this was not for the full amount that was outstanding. The Landlord also testified that the Tenant has also failed to pay rent for December, 2014 and now seeks an Order of Possession for unpaid rent.

#### Analysis

Having examined the Notice, I find that the contents on the approved form complied with Section 52 of the Act. Based on the written evidence of the witness and the Landlord's oral testimony, I accept that the Tenant was served the Notice by attaching it to the Tenant's door. As a result, using the deeming provisions of Section 90(c) of the Act, I find that the Tenant was deemed served with the Notice on November 8, 2014.

Sections 47(4) and (5) of the Act provides that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to cancel the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental site on the date to which the Notice relates.

Therefore, I find that the Tenant failed to pay the total amount of outstanding rent on the Notice or make an Application to dispute the Notice by November 13, 2014. As the Tenant failed to comply with Section 47(4) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, the Landlord is entitled to an Order of Possession. As the effective date of vacancy on the Notice has now passed, I find that the Landlord is entitled to an immediate Order of Possession.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$50.00 filing fee for the cost of this Application. Pursuant to Section 72(1) (b) of the Act, the Landlord may recover this filing fee by deducting this amount from the Tenant's security deposit held by the Landlord.

### Conclusion

For the reasons set out above, I grant the Landlord an Order effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

The Landlord is also granted the recovery of the filing fee for this Application from the Tenant's security deposit. The Landlord's Application for a Monetary Order is dismissed with leave to re-apply.

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 18, 2014

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Residential Tenancy Branch

