

## **DECISION AND REASONS**

### Dispute Codes

OPR, MNR, FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 03, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to Tenant at the rental unit. The Canada Post Website shows that this package was mailed on March 03, 2009.

The Landlord received the Direct Request Proceeding package on March 03, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is March 08, 2009.

Based on the written submissions of the Landlord, I find the Tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent, to retain the deposit and filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Proof of Service of 10 Day Notice to End Tenancy

The Landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy was served by posting the Notice to the door of the rental unit on February 2, 2009. The Landlord, which is a limited company, did not provide the identity of the agent for the Landlord who reportedly posted the Notice to End Tenancy.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord has the burden of proving that the Tenant was served with the 10 day Notice to End Tenancy.

### Analysis

In the absence of the evidence of proof of service of the Notice to End Tenancy I find that the Landlord has failed to establish that the Tenant was served with the 10 day Notice to End Tenancy.

Conclusion

Having found that the Landlord has failed to prove serve of the 10 day Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act

Dated March 23, 2009.

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