

## **DECISION**

Dispute Codes      OPR MNR MNSD 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 April 21, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail. The landlord received the Direct Request Proceeding package on April 21, 2009 and initiated service April 21, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served 5 days after it was mailed.

Based on the written submissions of the Landlord, I find the tenants have 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, whether the landlord may retain the deposit and recover the 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)*. I have reviewed all documentary evidence.

### 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 in person. The landlord did not provide any proof as to the date and time the service took place or who may have witnessed the service. The landlord provided an incomplete proof of service form dated April 2, 2009

and a copy of the 10 Day Notice to End Tenancy form which is dated April 7, 2009, five days after the service form was created.

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 is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy in accordance with the *Act*.

### 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 tenants were served with the 10 day Notice to End Tenancy in accordance with the *Act*.

### Conclusion

Having found that the landlord has failed to prove service 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.

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: May 05, 2009.

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Dispute Resolution Officer