

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC 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 May 8, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding in person with each tenant at the rental unit. The landlord received the Direct Request Proceeding package on May 8, 2009 and initiated service May 8, 2009.

### 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 and utilities, whether the landlord may 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)*. 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 provided contradictory evidence for Proof of Service of the 10 Day Notice to End Tenancy on the proof of service form whereby the landlord's name is written in the sentence which states "I, (the landlord's name) served the tenant with a 10 Day Notice to End Tenancy" and in the Witnessed by section of this form is the name and signature of a person who is listed as "friend / server", which leads me to question who

actually served the tenants with the 10 Day Notice to end tenancy the landlord or the friend/server?

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.

### Analysis

In the presence of contradictory evidence of proof of service of the 10 Day 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.

### 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 14, 2009.

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Dispute Resolution Officer