

DECISION AND REASONS

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, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 13, 2009 the landlord personally served each tenant with the Notice of Direct Request Proceeding at the rental unit service address. The Proof of Service documents submitted as evidence indicate a service date for each tenant of April 12, 2009. The landlord received the Direct Request Proceeding package on May 12, 2009 and I have accepted that the landlord has made a clerical error, entering a service date of April 12 vs. May 12, 2009 on the Proof of Service documents. I make this determination as the landlord is provided with the Proof of Service documents at the time of application for dispute resolution and these documents are pre-filled with the file number. Therefore, I have determined that the Notice of Direct Request Proceeding was personally served to each respondent on May 12, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is personally served.

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; to keep all or part of the security deposit; and to recover the filing fee from the tenants 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 submitted by the landlord.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant
- A copy of a residential tenancy agreement which was signed by the parties on September 1, 2007 indicating \$1,500.00 per month rent due on the first day of the month, there is no evidence of a deposit paid

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 20, 2009 with an effective vacancy date of April 29, 2009 for \$1,900 in unpaid rent and \$105.00 in unpaid utilities due on April 1, 2009

Documentary evidence filed by the landlord indicates that the male tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord on April 1, 2009. This date pre-dates the issue date of the Notice to End Tenancy; April 20, 2009. The Application for Dispute Resolution indicates the service date of April 1, 2009, the proof of Service document submitted as evidence does not contain a service date. However, this document is signed by the tenant; acknowledging receipt of the Notice to End Tenancy.

Analysis

I am able to accept that the Notice has been served, but unable to determine the date this occurred. Failure to provide a clear service date results in an inability to accurately determine the effective vacancy date of the Notice.

In the absence of the evidence of the date the Notice to End Tenancy was served I find that the effective vacancy date can not be established.

Conclusion

Having found that the landlord has failed to provide an accurate date of 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, with all required documents, upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

Dated May 15, 2009.

Dispute Resolution Officer