



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST 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, 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 declaring that on May 21, 2009, (time unspecified), the landlord personally served the tenant with the Notice of Direct Request Proceeding.

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 and a monetary Order for unpaid rent based on the Ten-Day Notice, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

Evidence and Proof of Service of 10 Day Notice to End Tenancy

In order to proceed through a Direct Request Application, the landlord was required to attach the following documents

- Copy of the 10 Day Notice
- Copy of the tenancy Agreement
- Proof of Service on the 10 Day Notice as either registered mail or written receipt signed by the tenant or a third party witness confirming how and when the notice was served

I note that the landlord submitted the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2009 with a vacancy date of May 12, 2009 and \$893.00 in rental arrears.
- A copy of the Proof of Service to the tenant of the Notice of Direct Proceeding and the Ten-Day Notice to End Tenancy
- A copy of a residential tenancy agreement which was completely unreadable.

Along with the Application for Dispute Resolution the landlord had submitted a "Proof of Service" form stating that the Ten-Day Notice to End Tenancy, was served in person to the tenant at 9:30 a.m. on May 2, 2009. This form was signed by the landlord/server but was not signed by a witness or the tenant as required.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the Act and of their rights under the Act in response. The landlord is seeking to end the tenancy due to this breach and the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy. In failing to include the mandatory data required to proceed with the Direct Request, I find that the landlord has not succeeded in

meeting its burden of proof in regards to service of the Ten-Day Notice to End Tenancy dated May 2, 2009.

In addition to the above, I find that the copies of the tenancy agreement submitted by the landlord are not sufficiently clear to be read. In fact, none of the hand-written information and very little of the print type could be deciphered and it was impossible to determine the names of the parties, the address, the rental rate, the security deposit, the signatures or any of the terms contained in this agreement.

Moreover, while the landlord's application states, under "Details of the Dispute" that, "*Tenant has failed to pay rent*", the landlord has neglected to furnish any further details and did not submit a tenant ledger or rental account statement that would serve to identify or allocate the time period for which the \$893.00 was owed.

Based on the foregoing, I find that the Direct Request Hearing can not proceed because of serious deficiencies in the application and the evidence supplied by the landlord. I find that the landlord's application must be dismissed on this basis.

Conclusion

I hereby dismiss the landlord's application without leave to reapply

June 2009

Date of Decision

Dispute Resolution Officer