



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (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 23, 2009 an agent for the Landlord personally served the Tenant with the Notice of Direct Request Proceeding at the rental unit address. The Landlord received the Direct Request Proceeding package on May 22, 2009 and initiated service on that day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served personally on the same day of service.

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 security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*.

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant

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- A copy of a residential tenancy agreement that was signed by the Tenant, which indicates that this tenancy began on May 01, 2008; that this Tenant moved in on December 27, 2009, although I presume that he actually moved in on December 27, 2008. The tenancy agreement indicates that the monthly rent of \$725.00 is due on the first day of each month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the an agent for the Landlord on May 08, 2009 which states that the Tenant must vacate the rental unit by May 18, 2009 unless the Tenant pays the rent within five days of receiving the Notice or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice indicates that the Tenant owes rent, in the amount of \$1,425.00, that was due on May 01, 2009.
- A copy of a Proof of Service of a 10 Day Notice to End Tenancy, in which an unnamed person declared that he/she posted the Notice on the door of the rental unit on May 08, 2009. Although the Prof of Service is signed, the name of the person signing the Proof of Service was not provided.

Analysis

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.

I find that the Landlord has failed to establish that the Tenant was served with the 10 day Notice to End Tenancy. In reaching this conclusion, I was strongly influenced by the fact that the identity of the person who served the Notice was not provided on the Proof of Service of a 10 Day Notice to End Tenancy or on the 10 Day Notice to End Tenancy. In the absence of the identity of the person who allegedly served the Notice, I am not satisfied that the 10 Day Notice to End Tenancy was served on the Tenant.

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



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Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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: June 02, 2009.
