



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

OPR, MNR, MNSD

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 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 26, 2009 the Landlord served the female Tenant with the Notice of Direct Request Proceeding by registered mail.

The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to female Tenant at the rental unit. The Canada Post Website shows that this package was mailed on May 26, 2009 and was delivered on May 28, 2009.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 26, 2009 at 1545 hours he personally served the male Tenant with the Notice of Direct Request Proceeding.

The Landlord received the Direct Request Proceeding package on May 26, 2009 and initiated service that day. Based on the written submissions of the Landlord, I find the Tenants have been 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; and to keep all or part of the security deposit, pursuant to sections 38, 55, and 67 of the *Act*.

### Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- Copies of two Proofs of Service of the Notice of Direct Proceeding.

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- A copy of a residential tenancy agreement between the Landlord and the Tenants. This agreement indicates that the tenancy began on May 01, 2008; that the monthly rent will be \$1,170.00; and that the Tenants paid a security deposit of \$585.00 on April 20, 2008.
- A copy of a document, which is signed by the Landlord and the Tenants, which indicates that the rent will be reduced to \$1,070.00 from the period between May 01, 2009 until April 30, 2010.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on May 01, 2009, which states that the Tenants must vacate the rental unit by May 11, 2009 as they have failed to pay rent in the amount of \$730.00 that was due on April 30, 2009. The Notice states that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a receipt, dated May 21, 2009, which indicates that the Tenants paid \$365.00 in cash on May 21, 2009. There is a notation on the receipt that the money was being accepted for "Use and Occupancy Only", which leads me to believe that this was paid toward outstanding rent from May.
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent, on which the Landlord declared that she personally served the male Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent on May 01, 2009 at 0930 a.m. I note that the male Tenant has signed the Notice to End Tenancy to indicate that he received this Notice.

In the Application for Dispute Resolution the Landlord stated the Tenants were personally served with the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on May 01, 2009.

In the Application for Dispute Resolution, which was signed on May 25, 2009, the Landlord stated that the Tenant still owes rent of \$730.00.

## Analysis

I note there is a discrepancy in the tenancy agreement that was submitted in evidence. Section 6 of the tenancy agreement stipulates that the rent is due on the first day of each month. There is a hand written note on the same page of the tenancy agreement that stipulates rent is to be paid between 1800 and 1930 hours on the last day of each month.

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The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies in these circumstances, and I conclude that the rent is due on the first day of each month.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent was substantively flawed. Specifically, I note that the Notice advised the Tenants that they failed to pay rent of \$730.00 that was due on April 30, 2009. I find this to be inaccurate, as the rent was not due until May 01, 2009. I find this to be a significant flaw that renders the Notice to End Tenancy unenforceable.

I find that the Landlord has submitted insufficient evidence to establish the amount of rent that is outstanding from the month of May. In reaching this conclusion, I noted that the Landlord indicated on the 10 Day Notice to End Tenancy, dated May 01, 2009, that the Tenants owed \$730.00 in unpaid rent. I also noted that the Landlord indicated on the Application for Dispute Resolution, dated May 25, 2009, that the Tenants owed \$730.00, in unpaid rent. I further noted that the Landlord received a payment of \$365.00 on May 21, 2009, which was presumably a rent payment. I am not satisfied, based on the payment received on May 21, 2009, that the Tenants still owed \$730.00 in rent on May 25, 2009.

## Conclusion

As the 10 Day Notice to End Tenancy is not enforceable, I hereby dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve a new 10 Day Notice to End Tenancy in the event that rent continues to be outstanding.

I find that the Landlord has not established a monetary claim. As the information provided in the written documentation is unclear, I hereby dismiss the Landlord's application for compensation for unpaid rent for May of 2009, with leave to reapply on that specific issue.

Dated: June 04, 2009.

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Dispute Resolution Officer