



Dispute Resolution Services

Page: 1

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 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 July 14, 2009 the Landlord served the male 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 male Tenant at the rental unit. The Canada Post Website shows that this package was mailed on July 14, 2009 and was delivered on July 20, 2009.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 14, 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 July 14, 2009 and has not yet been picked up by the recipient.

The Landlord received the Direct Request Proceeding package on July 14, 2009 and initiated service that day. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is July 19, 2009.

Based on the written submissions of the Landlord, I find the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

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 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 *Act*.

Proof of Service of 10 Day Notice to End Tenancy

In the Application for Dispute Resolution the Landlord stated the Tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on July 03, 2009.

The Landlord submitted a copy of Proof of Service of the 10 Day Notice to End Tenancy, in which the Landlord declared that she served the Notice on July 03, 2009 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 on July 03, 2009. The receipt does not indicate where this package was sent. The Canada Post website indicates that this package was mailed on July 03, 2009 and was signed for by a person with a different last name than either of the Tenants.

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. Based on the evidence submitted, I am not satisfied that the Landlord mailed the Notice to End Tenancy to the correct address.

In the absence of the evidence of proof of service of the 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.

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



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

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 each 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: July 22, 2009.

Dispute Resolution Officer