



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## INTERIM DECISION

### Dispute Codes

OPR, MNR

### 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 July 19, 2009 the Landlord served the 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 the rental unit. The Canada Post website shows that this package was mailed on July 19, 2009 and was signed for by the Tenant on July 24, 2009.

The Landlord received the Direct Request Proceeding package on July 17, 2009 and initiated service in two days. 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 24 2009.

Based on the written submissions of the Landlord, I find the Tenant has 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 and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*.

### Background and Evidence

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

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

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Tenant.

- A copy of a residential tenancy agreement between the Landlord and the Tenant, which is signed by the Tenant, that indicates that the tenancy began on July 01, 2009 and that the Tenant was required to pay rent of \$2,400.00 on the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed on July 11, 2009, which states that the Tenant must vacate the rental unit by July 20, 2009 as the Tenant has failed to pay rent in the amount of \$2,400.00 that was due on July 01, 2009. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy that declares that the Landlord served the Notice on July 11, 2009 to “an adult living in the house”. The Landlord does not provide the name of the individual nor does he state how he knows that this male resides in the rental unit.

In the Application for Dispute Resolution, the Landlord stated that the Tenant owes \$2,400.00 in rent from July of 2009.

## Proof of Service of 10 Day Notice to End Tenancy

I find that the Landlord submitted insufficient evidence to establish that the Notice to End Tenancy was served in accordance with section 88(e) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of evidence that clearly establishes that the person who received the Notice is an adult and that this person resides in the residence.

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.

## 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



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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 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: July 31, 2009.

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Dispute Resolution Officer