



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DIRECT REQUEST DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

The Hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the 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 August 25, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the front door of the subject address.

Preliminary Matter

Section 89 imposes special rules for serving an application for dispute resolution, requiring service in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

However Section 89(2) does permit an application by a landlord under section 55 [*order of possession for the landlord*], to be served by leaving a copy at the

tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides, as well as personally or by registered mail. In this instance, I find that the landlord chose to post the Notice of Direct Request on the door. I find that this method of service only complies with the Act for the purpose of the order of possession, and is not adequate service for an application for a monetary order.

Accordingly, I find that the portion of the landlord's application relating to the monetary order was not properly served in compliance with the Act and must be dismissed. However, the direct request proceeding pertaining to the Order of Possession based on the Ten-Day Notice, will proceed and a decision rendered.

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 rental arrears, to retain the security deposit from the tenant and reimbursement for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Ten-Day Notice, was served to the tenant by posting it on the door at 4:00 p.m. on August 13, 2009. A posted notice is deemed to be served in three days.

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, seeking to end the tenancy due to this breach has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

Submitted into evidence was a copy of the tenancy agreement. Although there are two tenants named on the document, only one tenant's signature is shown on the agreement. Accordingly this matter before me can only proceed against the tenant who signed the tenancy agreement on February 12, 2009.

The rent was shown as \$1,500.00 per month with security deposit of \$750.00. No copy of the tenant's rent account ledger was submitted. However in the Application of Direct Request, the landlord stated that the tenant was in arrears for rent for July 2009 and August 2009 in the amount of \$2,250.00 . Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession based on the Ten-Day Notice.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord's request for a monetary order for rent owed is dismissed with leave to reapply.

August 2009

Date of Decision

Dispute Resolution Officer