

## **DECISION**

Dispute Codes      OPR MNR ET

### Introduction

This 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, a Monetary Order, and an Order to End the Tenancy Early.

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 each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenants are deemed to be served the hearing documents on August 30, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that 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 an Order to end the tenancy early, pursuant to sections, 46, 55, 56, and 67 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on March 26, 2007 for a fixed term tenancy beginning April 1, 2007 which expired on April 1, 2008 and then switched to a month t month tenancy for the monthly rent

of \$2,600.00 due on 1st of the month and a deposit of \$2,600.00 was paid on or before May 1, 2007; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 18, 2009 with an effective vacancy date of August 28, 2009 due to \$2,696.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was either posted on the Tenants' door on August 18, 2009 or left with a guest of the Tenants in the presence of a witness.

### Analysis

The Landlord has provided a Proof of Service of the 10 Day Notice form which indicates that the Tenants were served the 10 Day Notice to End Tenancy by leaving it with a guest from the lower portion of the home and yet the 10 Day Notice form has posted on the door circled to indicate how the notice was served to the Tenants.

The purpose of serving documents under the *Act* is to notify the persons being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenants were properly served with the 10 day Notice to End Tenancy. Section 88(e) of the *Act* states that a notice may be served by leaving a copy at the person's residence with an adult who apparently resides with the person however it does not provide for service to a "guest" of a tenant.

In the presence of contradictory evidence relating to the service of the 10 Day Notice to End Tenancy I find that the Landlord has failed to establish how and when service of the 10 Day Notice to End Tenancy was effected and if the notice was served to a guest of the Tenants service was not effected in accordance with the *Act*. Based on the

aforementioned I find that the 10 day Notice to End Tenancy due to Unpaid Rent dated August 18, 2009 is without force or effect.

I note that the Landlord collected \$2,600.00 as the security deposit which is an amount that is equal to one month's rent and is in contravention of Section 19 of the Act which states that a landlord must not require or accept a security deposit that is greater than the equivalent of  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement. If a landlord accepts a security deposit that is greater than the amount permitted under the Act, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the above the Tenants can apply the overpaid security deposit to the unpaid rent which would change the amount of unpaid rent that is outstanding.

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby dismiss the Landlord's application without leave to reapply.

### Conclusion

**I HEREBY ORDER** that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated August 18, 2009 is without force or effect.

**I HEREBY DISMISS** the Landlord's application, without leave to reapply.

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: August 31, 2009.

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Dispute Resolution Officer