

## **DECISION**

Dispute Codes      OPR MNR FF

### 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 to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 9, 2009 at 7:30 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit. 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 to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 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 the Tenants;
- A copy of a residential tenancy agreement which was signed by all parties on June 28 and June 29, 2009 for a fixed term tenancy beginning July 1, 2009 and

set to expire on June 30, 2010 for the monthly rent of \$2,450.00 due on 1st of the month and a deposit of \$1,225.00 was paid on or before July 1, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 2, 2009 with an effective vacancy date of September 12, 2009 due to \$2,450.00 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 handed to the Tenants' daughter on September 2, 2009 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 handing it to the Tenants' Daughter in the presence of a witness, however section 88 of the *Residential Tenancy Act* provides for service by leaving a copy at the person's residence with an **adult** who apparently resides with the tenant. There is no evidence before me to support that the Tenants' Daughter is an adult.

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 is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy in accordance with the *Act*.

Based on the above I find that the Landlord has failed to establish that service of the 10 Day Notice to End Tenancy was effected and the 10 day Notice to End Tenancy due to Unpaid Rent dated September 2, 2009 is without force or effect.

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 September 2, 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: September 14, 2009.

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Dispute Resolution Officer