

DECISION

Dispute Codes OPR MNR MNSD 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 for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenant 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 12:00 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit. On the bottom of the Proof of Service of the Notice of Direct Request Proceeding a female with the same last name as the Tenant has signed stating that she has "hand delivered at 5:15 pm on Sept. 09.09 to (Tenant's name).

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 Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on August 1, 2008 for a fixed term tenancy beginning July 1, 2008 and set to expire

on October 1, 2008, then switching to a month to month tenancy, for the monthly rent of \$535.00 due on 1st of the month and listing a damage deposit of \$265.00 and stating "will paint exterior of unit for damage deposit" ; 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 \$535.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant on September 2, 2009 at 11:50 a.m. and refers to notes listed on top of the 10 day notice to end tenancy. I note that the manager writes on the 10 day notice to end tenancy "HAND DELIVER: 11:50 a.m. TO DAUGHTER; AT RESIDENCE BY: Manager (manager's name).

Analysis

The Landlord has provided a Proof of Service of the 10 Day Notice form which indicates that the Tenant was 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.

I also note the contradictory evidence written on the Proof of Service of the Notice of Direct Request Proceeding whereby the Landlord has signed stating he served the Tenant personally and yet a female with the same last name as the Tenant has signed stating she has served the Tenant.

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 and the Notice of Direct Request Proceeding 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 in accordance with the Act and I hereby order that 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.

Dispute Resolution Officer