

## **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, an Order to retain the security deposit in partial satisfaction of the claim, 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 11, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on September 16, 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 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; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant 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 December 31, 2007 for a month to month tenancy beginning January 1, 2008 for

the monthly rent of \$640.00 due on 1st of the month and a deposit of \$320.00 was paid on or before December 15, 2007; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 3, 2009 with an effective vacancy date of September 13, 2009 due to \$1,645.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy by leaving it personally with the Tenant on September 3, 2009 at 6:00 p.m. in the presence of a witness.

### Analysis

The Landlord filed his application for dispute resolution on September 10, 2009 stating: "Rent was owing for June. Also both rent cheques for July and August in the amount of \$640.00 bounced." I note that the 10 day notice to end tenancy was issued on September 3, 2009 and yet there is no mention on either the Landlord's application for dispute resolution or on the 10 day notice to end tenancy of rent owing for September 2009 which leads me to question if payment was accepted by the Landlord from the Tenant for September 2009 rent and if the Landlord inadvertently re-instated the tenancy.

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 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 16, 2009.

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Dispute Resolution Officer