

DECISION AND REASONS

Dispute Codes: CNR OP MN SD FF

1. This hearing dealt with (a) an application by the tenant for an order setting aside the landlord's Notice to End Tenancy; and (b) an application by the landlord for an order of possession, a monetary order and an order allowing the landlord to retain all or part of the security deposit. Both parties attended the hearing and had an opportunity to be heard.
2. The facts before me are as follows. This tenancy began approximately one year ago. The rent is \$750.00 due in advance on the first day of each month. The tenant has not paid the rent for July, August or September and a portion of June's rent is still in arrears. Ms. A testified that the tenant was served with a ten-day Notice to End Tenancy but was unable to testify with certainty as to the date of service. For her part, Ms. Y testified that she was never served with a ten-day Notice but rather that she was served with a one-month Notice and another notice on a form from Ontario. Ms. Y did not submit copies of the notices she claims to have received. In fact, the only piece of evidence submitted by either party was page 1 of the ten-day Notice which was submitted by the landlord.
3. Given that the landlord bears the burden of proof in this case where a Notice to End Tenancy has been disputed, I find, based on the evidence before me, that the landlord has failed to meet that burden. I am not satisfied that the tenant was ever properly served with a ten-day Notice to End Tenancy. I therefore allow the tenant's claim and set aside the ten-day Notice that the landlord claims to have served. As a result, the tenancy shall continue in accordance with its original terms.

Dated September 03, 2009.