



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes - OPR, MNR, MNSD, FF

Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 29, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding personally.

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 the parties on January 16, 2009 for a month to month tenancy beginning January 16, 2009 for the monthly rent of \$800.00 + \$100.00 utilities due on the 1st of the month and a security deposit of \$400.00 was paid on January 16, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 18th, 2009 with an effective vacancy date of October 16, 2009 due to \$800.00 in unpaid rent.

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a Proof of Service document which provided that the Notice to End Tenancy was served September 16, 2009 at 11:35 a.m. The Notice to End the Tenancy was dated September 18, 2009.

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.

Analysis

Since the Notice to End the Tenancy is dated September 18, 2009, the date of service outlined in the signed Proof of Service (September 16, 2009) is inconsistent with the issuance of the Notice.

With conflicting evidence of proof of service of the Notice to End the Tenancy I find that the landlord has failed to establish that the tenant was served with the Notice.

Conclusion

Having found that the landlord has failed to prove service of the Notice to End the tenancy I dismiss the landlord's application with 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: October 02, 2009.

Dispute Resolution Officer