



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 28, 2009 at 4:00 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding by posting it on the door of the tenant's rental unit. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the third day after it was posted.

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, 72, and 89 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 October 2, 2007 for a month to month tenancy beginning October 15, 2007 for the monthly rent of \$1000.00 due on the 1st of the month and a security deposit of \$500.00 was paid on October 2, 2007; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 19, 2009 with an effective vacancy date not indicated due to \$1000.00 in unpaid rent.



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Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the month of September 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenant's rental unit on September 9, 2009 at 10:00 a.m. The landlord provided documentation confirming that the service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Proof of Service of 10 Day Notice to End Tenancy

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

When requesting a monetary order, service of the Notice of Direct Request Proceedings the applicant must comply with Section 89 (1) of the *Act*. Section 89 (1) does not consider posting of the Notice of the Proceeding service on the tenant's rental unit as service.

The Notice to End the Tenancy is dated September 19, 2009 and the date of service outlined in the signed Proof of Service (September 9, 2009) are chronologically inconsistent.

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 of Direct Request Proceeding sufficient to consider an Order of Possession and that landlord has failed to establish proper service of the Notice to End the Tenancy I have dismiss this 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