



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 03, 2009 an agent for the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which indicates that the Landlord mailed a package to the rental unit. The Canada Post website shows that this package was mailed on November 03, 2009 but has not yet been picked up by the recipient.

The Landlord received the Direct Request Proceeding package on November 02, 2009 and initiated service within three days. Section 90 of the Residential Tenancy Act determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is November 08, 2009.

Based on the written submissions of the Landlord, I find 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, 55, 67, and 72 of the *Act*.

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which names the Tenant but is not signed by him. This agreement indicates that the Tenant and two other people moved into the rental unit on June 01, 2005, at which time they agreed to pay \$645.00 per month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to have been signed on October 14, 2009, which states that the Tenant must vacate the rental unit by October 24, 2009 as the Tenant has failed to pay rent in the amount of \$830.00 that was due on October 01, 2009. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy that indicates that an agent for the Landlord posted the Notice on the front door of the rental unit on October 14, 2009 at 0900 hours, in the presence of a person who has the same last name as the agent for the Landlord, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on October 14, 2009.

In the Application for Dispute Resolution, the Landlord declared that the Tenant owes \$140.00 in rent from September of 2009 and \$690.00 in rent from October of 2009.

Analysis

As the tenancy agreement that was submitted in evidence does not appear to be signed by the Tenant, I find that I have insufficient evidence to conclude that the Tenant entered into a tenancy agreement with the Landlord.



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Conclusion

Having found that I have insufficient evidence to conclude that this Tenant entered into a tenancy agreement, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine whether a tenancy agreement exists between the parties. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the Act, within **three (3) days** of receiving this decision.

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: November 10, 2009.
