



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DIRECT REQUEST DECISION

### Dispute Codes

OPR, MNR, MNSD, FF

### Introduction

The 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 and a monetary order.

The landlord's application for direct request was processed on November 20, 2009. The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 23, 2009, the landlord served the one of the tenants, J.S., with the Notice of Direct Request Proceeding. The applicant provided a receipt to confirm service by registered mail. The landlord also submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 27, 2009, the landlord served the other co-tenant, D.W., with the Notice of Direct Request Proceeding.

The Residential Tenancy Rules Procedure, Rule 3.1 requires that together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of: a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; c) the details of any monetary claim being made, and d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

Section 59 states that an application for dispute resolution must be in the approved form, include full particulars of the dispute, and be accompanied by the

fee and that the applicant must give a copy of the application to the other party within 3 days of making it.

Based on the written submissions of the landlord, I find that only one co-tenant, J.S., had been duly served with the Dispute Resolution Direct Request .Proceeding documents within the required 3-day deadline imposed by the Act. I find that these proceedings can only apply to the applicant, J.S. who was duly served and the portion of the application pertaining to the tenant, D.W. must be dismissed with leave.

#### 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 rental arrears, to retain the security deposit from the tenant and reimbursement for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

#### Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Ten-Day Notice, was served to the tenant by posting it on the tenant's door at 2:37 p.m. on November 9, 2009 in front of a witness.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the Act and of their rights under the Act in response. The landlord, seeking to end the tenancy due to this breach has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy and I find that the landlord has met this burden.

#### Analysis

Submitted into evidence was a copy of the tenancy agreement signed on May 14, 2009 showing rent set at \$1,150.00, per month and security deposit of

\$575.00. No copy of the tenant's rent account ledger was submitted. However in the Application of Direct Request, the landlord stated that the tenant was in arrears in the amount of \$575.00. Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$625.00 comprised of \$575.00 arrears for the month of November, 2009 and the \$50.00 fee paid by the landlord for this application. Pursuant to my authority under section 72(2)(b), I order that the landlord retain the security deposit and interest of \$ 575.00 in partial satisfaction of the claim, leaving a balance of \$50.00.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

December 2009

Date of Decision

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Dispute Resolution Officer