

DECISION

Dispute Codes OPR MNR

Introduction

This 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, a Monetary Order, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 19, 2009 at 11:09 a.m. the Landlord served the Tenant's adult daughter with the Notice of Direct Request Proceeding, in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenant's adult daughter, who resides with the Tenant, has been served with the Dispute Resolution Direct Request Proceeding documents.

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenant with the notice for dispute resolution in accordance with section 89 (1) of the Act.

In this case the Landlord personally served the Tenant's adult daughter, who resides with the Tenant, with the notice of the Direct Request Proceeding. Section 89(2)(c) provides that if the notice of direct request application was left at the Tenant's resident with an adult who apparently resides with the Tenant, service is met only for the request of an Order of Possession. Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply, and the following decision will only consider the Landlord's request for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent pursuant to sections 55 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 ;
- A copy of a residential tenancy agreement which was signed by both parties on April 4, 2009 for a fixed term tenancy beginning April 1, 2009 which is set to expire on March 30, 2010 for the monthly rent of \$650.00 due on 1st of the month and a deposit of \$325.00 was paid on or before April 4, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 6, 2009 with an effective vacancy date of November 16, 2009 due to \$711.01 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the Tenant's adult daughter on November 6, 2009 at 12:22 p.m. The Tenant's adult daughter signed the proof of service form to acknowledge receipt of the 10 Day Notice to End Tenancy.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on November 6, 2009 and the effective date of the notice is November 16, 2009 pursuant to section 90 of the *Act*. I

accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Monetary Order – Based on the foregoing, I find that service was not effected according to section 89 (1) of the *Residential Tenancy Act*. To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's monetary claim, with leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Landlord's monetary claim, 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: December 03, 2009.

Dispute Resolution Officer