



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 December 08, 2009 the Landlord personally served the Tenant with the Notice of Direct Request Proceeding.

The Landlord received the Direct Request Proceeding package on December 08, 2009 and initiated service that day. 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 is signed by the Tenant. The tenancy agreement indicates that the tenancy began on October 01, 2009; that the Tenant was required to pay rent of \$850.00; and that the Tenant paid a security deposit of \$425.00

on October 31, 2009.

- A copy of a Ten Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on December 02, 2009, which declares that the Tenant must vacate the rental unit by December 12, 2009 as the Tenant has failed to pay rent in the amount of \$1,275.00 that was due on December 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 signed copy of the Proof of Service of the Ten Day Notice to End Tenancy that indicates that the Landlord personally served the Notice to End Tenancy to a person who is not named on the tenancy agreement and is not named as a respondent on the Application for Dispute Resolution on December 02, 2009, in the presence of his wife, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent was personally served to a person who is not named on the tenancy agreement and is not named as a respondent on the Application for Dispute Resolution. There is a notation on the Application for Dispute Resolution that appears to describe the relationship of this person to the Tenant, but I find that there is insufficient evidence provided to determine the nature of that relationship.

In the Application for Dispute Resolution, the Landlord declared that the Tenant still owes \$425.00 in rent from November and \$850.00 in rent from December.

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 has the burden of proving that the tenant was served with the Ten Day Notice to End Tenancy.

I find that there is insufficient evidence to conclude that the Ten Day Notice to End Tenancy was served in accordance with section 88 of the *Act*, as I am unable to determine the relationship between the Tenant and the person who received the Notice or the age of the person who received the Notice .

Analysis

In the absence of the evidence of proof of service of the Notice to End Tenancy I find that the Landlord has failed to establish that the Tenant was served with the 10

day Notice to End Tenancy.

Conclusion

Having found that the Landlord has failed to prove service of the Ten Day Notice to End Tenancy, 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 the details of service of the Ten Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision. 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: December 21, 2009.

Dispute Resolution Officer