

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep all the security deposit, for money owed for compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant by the male Landlord on November 20, 2009.

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy commenced on August 1, 2008 and switched to a month to month tenancy after July 31, 2009. The monthly rent of \$1,030.00 is payable on the first of each month and the Tenant paid a security deposit of \$500.00 on August 1, 2008.

The Landlord testified that the Tenant is in arrears of \$1,580.00 for past rent and he is seeking to have the Tenant move out of the rental unit.

The Landlord could not provide testimony in relation to service of the copy of the 10 Day Notice to End Tenancy that was submitted in the Landlord's evidence. I repeatedly asked the Landlord if he gave the Tenant a copy of the 10 Day Notice to End Tenancy dated November 12, 2009 and the Landlord kept replying that he gave the Tenant a copy of the dispute resolution package on November 20, 2009.

The Tenant testified that the only documentation she has ever received from the Landlord is a copy of the Landlord's dispute resolution package which she received on November 20, 2009. When I asked the Tenant to read the title of each form she received, she did not mention a 10 Day Notice to End Tenancy for Unpaid Rent.

I asked the Landlord again if he gave the Tenant a copy of the 10 Day Notice to End Tenancy dated November 12, 2009, and the Landlord responded by saying "I filled out the form in your office and gave it to your office." I asked again if the Landlord gave a copy of the 10 Day Notice to End Tenancy form to the Tenant and he answered "no".

### Analysis

The Landlord has provided a copy of a 10 Day Notice to End Tenancy form dated November 12, 2009, however the Landlord has failed to serve the Tenant with a copy of this form.

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 actually served with the 10 day Notice to End Tenancy.

In the presence of the testimony relating to the service of the 10 Day Notice to End Tenancy, I find that the Landlord has failed to establish how and when service of the 10 Day Notice to End Tenancy was effected and as a result I find that the 10 day Notice to End Tenancy due to Unpaid Rent dated November 12, 2009 is without force or effect and the Landlord's application is dismissed.

As the Landlord has not been successful with his application I decline to award recovery of the filing fee.

Conclusion

**I HEREBY ORDER** that the 10 Day Notice to End Tenancy issued for Unpaid Rent dated November 12, 2009 is without force or effect.

**I HEREBY DISMISS** the Landlord's application, without 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 31, 2009.

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Dispute Resolution Officer