

DECISION

Dispute Codes - OPR, MNR, MNSD, FF

Introduction

This matter was conducted 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 due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 15, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document send by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant had 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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 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 for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on August 2, 2007 for a month to month tenancy beginning on September 1, 2007 for a current monthly rent of \$1,172.00 due on the last day of the month and a security deposit of \$556.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 1, 2010 with an effective vacancy date of January 11, 2010 due to \$1,172.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of February, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served when it was posted on the tenant's rental unit door on February 2, 2010 at 10:30 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants had been served with notice to end tenancy as declared by the landlord. However, the 10 Day Notice to End Tenancy for Unpaid rent is dated January 1, 2010 and yet the rent was not due until January 31, 2010. As the Notice was issued 30 days prior to the rent being due, I find the Notice to be ineffective.

Conclusion

Based on my findings, I dismiss the landlord's application in its entirety, 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: March 08, 2010.

Dispute Resolution Officer