

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 March 12, 2010 the landlord served the tenants 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.

The service of the proceeding documents were sent via registered mail to both tenants in the same letter. Using registered mail is intended to be to obtain the signature of the person receiving the documents, I cannot determine who may have received the service documents.

As I cannot determine which tenant may have received the proceeding documents I find that the tenants have not been served with the Dispute Resolution Direct Request Proceeding documents, as required.

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; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on January 29, 2009 for a month to month tenancy beginning on January 31, 2009 for the monthly rent of \$900.00 due on the welfare day of the month and a security deposit of \$450.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 22, 2010 with an effective vacancy date of February 28, 2010 due to \$900.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of the last few days of February and the majority of March,

2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally on February 22, 2010. 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 cannot determine if service of the hearing documents provided service to both tenants.

As the landlord has not provided any documentation as to when “welfare” day of the month is I cannot determine what day rent was due. And as I cannot determine when rent is due I cannot determine if it is overdue or if the 10 Day Notice to End Tenancy for Unpaid Rent was issued in compliance with the Section 46 of the *Act*.

Conclusion

Base on my findings above, I dismiss the landlord’s Application in its entirety, 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: March 22, 2010.

Dispute Resolution Officer