

## **DECISION**

Dispute Codes      OPR MNR FF

### 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 Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2010 the Landlord served each Tenant 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 Tenants have 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 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

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;

- A copy of a residential tenancy agreement which was signed by all parties on October 20, 2009 for a month to month tenancy effective October 23, 2009 for the monthly rent of \$700.00 due on the 3<sup>rd</sup> Wednesday of every month and a deposit of \$350.00 was paid on October 21, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 28, 2010 with an effective vacancy date of March 9, 2010 due to \$700.00 in unpaid rent which is listed as being due on February 1, 2010.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenants' door on February 28, 2010 at 10:00 a.m. in the presence of a witness.

### Analysis

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on February 28, 2010 and states "you have failed to pay rent in the amount of \$700.00 that was due on 01 02 2010 (Day Month Year)" and a copy of the tenancy agreement which stipulates rent is payable on the 3<sup>rd</sup> Wednesday of every month.

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 served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

I find that the 10 Day Notice issued by the Landlord does not meet the requirements of the *Act* as rent is not payable until the 3<sup>rd</sup> Wednesday of each month and therefore the rent was not due until February 17, 2010; and not February 1, 2010 as listed on the Notice. Based on the aforementioned the 10 Day Notice to End Tenancy issued on February 28, 2010 is invalid.

Based on the above I find that this application does not meet the requirements for the Direct Request process and I hereby dismiss the Landlord's application without leave to reapply.

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

Conclusion

**I HEREBY ORDER** that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 28, 2010, 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: March 26, 2010.

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Dispute Resolution Officer