

## **DECISION**

Dispute Codes      OPR, CNR, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and to recover the filing fee for this proceeding. The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 16, 2010.

The Landlords claim that they had an agent personally serve the Tenants with a copy of their Application and Notice of Hearing on January 27, 2010. The Tenants denied receiving a copy of the Landlords' hearing package. The Landlords' agent was not available to give evidence at the hearing. In the circumstances, I find that there is insufficient evidence that the Tenants were served as required by s. 89 of the Act and the Landlords' application is dismissed with leave to reapply.

### Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?

### Background and Evidence

This tenancy started on December 1, 2008. The Parties agree that rent was \$700.00 at the beginning of the tenancy and was reduced by \$25.00 for the period April 2009 to July 2009 to compensate the Tenants for paying for hydro used by other tenants occupying another rental unit on the rental property. The rent went back up to \$700.00 per month for August and September 2009 because the other rental unit on the property was vacant and there were no other tenants using hydro. The Tenants claimed that the Landlord agreed they could reduce their rent by \$75.00 for August 2009 to compensate them for the loss of use of a stove for 3 months.

The Parties agreed that rent was reduced to \$650.00 for November and December 2009 to compensate them for their paying hydro when new tenants moved into the other rental suite. However, sometime in December 2009 the Tenants decided that they did not want to pay for hydro for the other suite anymore and agreed with the Landlords that rent would go back to \$700.00 per month starting January 1, 2010. The Landlords claim that the Tenants deposited \$550.00 to the account of one of the Landlords, T.N., on January 7, 2010 but did not pay the balance. Consequently, on January 16, 2010, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenants claim that social services deposited \$200.00 to the other Landlord's (D.T.) bank account on January 8, 2010 in payment of the balance of January 2010 rent and \$50.00 for rent arrears for December 2009. The Landlord claimed that the \$200.00

deposited by social services was in payment of a security deposit for the other tenant of the rental property. The Landlords did not provide any evidence to show what rent payments had been made by or on behalf of the Tenants.

### Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlords' evidence is contradicted by the Tenants, the Landlords will need to provide additional, corroborating evidence to satisfy the burden of proof.

In the absence of any corroborating financial evidence, I find that the Landlords have not provided sufficient evidence to show that there are rent arrears as alleged and as a result, the 10 Day Notice to End Tenancy for Unpaid Rent dated January 16, 2010 is cancelled and the tenancy will continue.

### Conclusion

The Tenants' application is granted. The 10 Day Notice dated January 16, 2010 is cancelled and the tenancy will continue. 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 04, 2010.

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Dispute Resolution Officer