

DECISION

Dispute Codes OPR MNR MNSD 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 for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord did not submit a signed Proof of Service of the Notice of Direct Request Proceeding.

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 cost of the filing fee, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of a registered mail receipt which was photocopied onto a copy of the Notice of Direct Request document for each Tenant; and
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on August 25, 2008, for a fixed term tenancy effective September 1, 2008, and switching over to a month to month tenancy after August 31, 2009, for the monthly rent of \$1,450.00 due on the 1st of the month. A deposit of \$725.00 was paid on approximately August 25, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 15, 2010, with an effective vacancy date of March 26, 2010 due to \$1,450.00 in unpaid rent that was due on March 1, 2010; and

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 March 15, 2010 at 10:30, in the presence of a witness.

Analysis

The Landlord has filed through the Direct Request Proceeding and did not provide a completed Proof of Service of the Notice of Direct Request form attesting to how and when the Notice of Direct Request package was served to each Tenant.

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 Tenants were served with notice of the Direct Request Proceeding.

In the absence of information pertaining to the service of the Direct Request Proceeding documents I find that the Landlord has failed to establish that service was effected in accordance with the Act. Having found that the Landlord has failed to prove service of the notice of Direct Request Proceeding I have determined that this application be dismissed with leave to reapply.

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

Conclusion

I HEREBY DISMISS the Landlord's application, 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: April 12, 2010.

Dispute Resolution Officer