

## **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 May 17, 2010 at 2:06 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the tenant has 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; for all or part of the security deposit and to recover the filing fee from the tenant 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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 1, 2009 for a 1 year fixed term tenancy beginning on July 1, 2008 that converted to a month to month tenancy on July 1, 2009 for the current monthly rent of \$850.00 due on the 1<sup>st</sup> of the month and a security deposit of \$425.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 2, 2010 with an effective vacancy date of May 12, 2010 due to \$445.00 unpaid rent; and
- A copy of a tenant account ledger showing outstanding rent in the amount of \$382.00 on May 1, 2010.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of May 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the rental unit door on May 2, 2010 at 5:10 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

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

### Analysis

I have reviewed all documentary evidence and accept that the tenant have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on May 5, 2010 and the effective date of the notice is amended to May 15, 2010, pursuant to Section 53 of the *Act*.

However, as the 10 Day Notice to End Tenancy notes the outstanding rent to be \$445.00, the tenancy agreement shows rent to be \$850.00, and the account ledger shows rent due on May 1, 2010 to be \$382.00 and in the absence of any explanation from the landlord for this discrepancy, I find the 10 Day Notice to End Tenancy is ineffective.

### Conclusion

Based on my findings above, 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: May 25, 2010.

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Dispute Resolution Officer