<u>DECISION</u>

<u>Dispute Codes</u>   OPR MNR

<u>Introduction</u>

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 and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 11, 2010, the Landlord served the 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 Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

<u>Issue(s) to be Decided</u>

Is the Landlord is entitled to an Order of Possession and a Monetary Order under section 55 of the *Residential Tenancy Act*?

<u>Background and Evidence</u>

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 the Tenant; and

- A copy of a tenancy agreement between a previous Landlord and the Tenant signed by both parties on March 15, 2010, for a tenancy beginning April 1, 2010, for the monthly rent of $700.00 and a deposit of $350.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, June 2, 2010, with an effective vacancy date of June 12, 2010 due to $700.00 in unpaid rent which was due on June 2, 2010; and

- A notation made by the Applicant stating that the Applicant purchased the rental property April 30, 2010 and became the current Landlord.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally by the Landlord on June 2, 2010, at 5:40 p.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 June 2, 2010, and states "you have failed to pay rent in the amount of $700.00 that was due on 2 06 2010 (Day Month Year)". 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 the Notice was issued June 2, 2010, for rent that was due on June 2, 2010. The tenancy agreement does not stipulate the day in the month rent is payable therefore I cannot determine when rent was due. That being said a 10 Day Notice cannot be issued on the same date that rent is due as the Tenant has until midnight on the day rent is due to make the payment. Therefore the Notice cannot be issued until the day after rent is due, for example if rent is due on the 2nd of the month then the notice cannot be issued until the 3rd of the month. Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on June 2, 2010 is invalid and I hereby dismiss the Landlord's application without leave to reapply.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated June 2, 2010, is void and 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: June 16, 2010.

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Dispute Resolution Officer