

## **DECISION**

### **Dispute Codes:**

OPR, MNR

### **Introduction**

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order.

The Landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on June 15, 2010, at 7:15 p.m., the Landlord served both of the Tenants with the Notice of Direct Request Proceeding, by leaving the document personally with the Tenants at the rental unit. The Proof of Service documents were signed by a witness.

Based on the written submissions of the Landlord, I find that the Tenants have been served with the Direct Request Proceeding documents.

### **Issue(s) to be Decided**

- Is the Landlord entitled to an Order of possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon each of the Tenants;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenants;
- A copy of two tenancy agreements and an addendum; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 2, 2010, with a stated effective vacancy date of June 12, 2010, for \$1,200.00 in unpaid rent and \$350.00 in unpaid utilities.

### **Analysis**

The Landlord did not provide an explanation as to why he provided two tenancy agreements. One of the agreements contains 6 pages. This agreement is not signed by the Landlord or the Tenants. The other agreement is incomplete (pages 1 and 2 of a 6 page agreement) with no signature of the Landlord or Tenants. The Landlord also

provided a copy of an Addendum, but it is not clear to which tenancy agreement it was appended.

The 10 Day Notice to End Tenancy for Unpaid Rent includes an amount for unpaid utilities. Section 46(6) of the Act states:

**Landlord's notice: non-payment of rent**

**46** (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlords did not provide evidence that they had provided the Tenants with written demand for payment of the utilities more than 30 days before issuing the Notice to End Tenancy, or that the utilities remained unpaid.

**Conclusion**

Based on the foregoing, I find that a participatory hearing is required in order to determine whether a valid tenancy agreement existed between the Landlord and the Tenants named in the Landlords' Application and if so, for the Landlord to provide evidence with respect to the unpaid utilities. Notices of Reconvened Hearing are enclosed with this decision for the Applicants to serve upon the Tenants within **three (3) days** of receiving this decision in accordance with section 88 of the Act.

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 23, 2010

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