

## **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 Landlords submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on June 17, 2010 the Landlord's agent mailed the Notice of Direct Request Proceeding, by registered mail, to each of the Tenants at the rental unit. The Landlord provided copies of the registered mail receipts tracking numbers and envelopes containing the Notice of Direct Request Proceeding documents in evidence. Service in this manner is deemed to be effected 5 days after mailing the documents.

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 a two page residential tenancy agreement, which indicates a monthly rent of \$2,100.00 due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 10, 2010, with a stated effective vacancy date of June 20, 2010, for \$4,200.00 in unpaid rent for the months of May and June, 2010.

## **Analysis**

The Proof of Service document for the Notice to End Tenancy indicates that the Notice to End Tenancy was served on a person, who is not a Tenant under the tenancy agreement, who “resides in the basement”.

A Notice To End Tenancy must be served in accordance with the provisions of Section 88 of the Act, which states:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;**
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations

(emphasis added)

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 the 10 day Notice to End Tenancy.

The Landlord did not provide evidence that the person served with the Notice to End Tenancy was an adult, or that he resided with the Tenants in the same rental unit. In the absence of such evidence, I find that the Landlord has failed to establish that the Tenants were served with the 10 day Notice to End Tenancy.

### **Conclusion**

Having found that the Landlord has failed to prove service of the Notice to End Tenancy, I have determined that the Landlord's application be dismissed 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: June 23, 2010

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