

## **INTERIM DECISION**

### **Introduction**

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 11, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is August 16, 2010.

Based on the written submissions of the Landlord, I find 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 and to a monetary Order for unpaid rent, pursuant to sections 55 and 67, of the *Act*.

### **Background and Evidence**

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on April 11, 2010 and that the Tenant was required to pay rent of \$880.00 on the first day of each month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by the Landlord on August 02, 2010, which declares that the Tenant must vacate the rental unit by August 15, 2010 as the Tenant has failed to pay rent in the amount of \$880.00 that was due on August 01, 2010. The Notice declares that the tenancy will end unless the Tenant pays the rent or submits an Application for

Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.

- A copy of the Proof of Service of the 10 Day Notice to End Tenancy in which the Landlord declared that he posted the Notice on the Tenant's door on August 02, 2010 at 0730 hours, in the presence of his wife, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for was placed in the mail slot on August 02, 2010 and that the Tenant has not paid rent July or August of 2010.

### Analysis

The purpose of serving documents under a Notice to End Tenancy is to notify the Tenant of their failure to pay the rent and to give them the opportunity to remedy the breach. The Landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy.

In these circumstances the Landlord declared on one occasion that the Notice to End Tenancy was posted on the door and on another occasion the Landlord declared that the Notice was placed in the Tenant's mail slot. As this evidence is contradictory, I find that the Landlord has failed to establish how the Tenant was served with the 10 day Notice to End Tenancy.

### Conclusion

Having found that the Landlord has failed to prove serve of the 10 day Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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: August 18, 2010.

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Dispute Resolution Officer