

## **DECISION**

Dispute Codes      OPR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Landlord and his Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

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

### Background and Evidence

The Agent testified that she served the Tenant with the Notice of Dispute Resolution hearing documents in person on August 11, 2010.

The Landlord and Tenant entered into a written tenancy agreement on July 17, 2010 for a fixed term tenancy effective July 17, 2010 which is set to expire on January 16, 2011. Rent is payable on the first of each month in the amount of \$450.00 and a security deposit of \$230.00 was paid on July 17, 2010.

The Landlord testified that the Tenant failed to pay August 1, 2010 rent on time so a 10 Day Notice to End Tenancy was issued on August 2, 2010. The Agent confirmed that she personally served the Tenant with the 10 Day Notice on August 2, 2010, at the

rental unit. The Tenant paid \$165.00 on August 2, 2010 and \$270.00 on August 5, 2010, and the Tenant now refuses to pay the balance owing.

The Landlord confirmed the 10 Day Notice provided in their evidence is a copy of the original Notice served to the Tenant.

### Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports the tenancy was effective July 17, 2010. The Landlord and Agent provided contradictory testimony pertaining to the date and method the 10 Day Notice was served to the Tenant. On the Landlord's application it notes that the Notice was posted on the Tenant's door while the Agent testified it was served to the Tenant in person.

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*.

The 10 Day Notice issued by the Landlord does not meet the requirements of the *Act* as the Notice is dated July 2, 2010, fifteen days prior to the onset of the tenancy. Based on the aforementioned I find that the 10 Day Notice to End Tenancy issued on July 2, 2010, is invalid and therefore I dismiss the Landlord's request for an Order of Possession.

As the Landlord has not been successful with his application I decline to award him recovery of the filing fee.

Conclusion

**I HEREBY ORDER** that the 10 Day Notice to End Tenancy issued for Unpaid Rent dated July 2, 2010, is void and 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: August 24, 2010.

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Dispute Resolution Officer