

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

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 Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 17, 2010, the Landlord served the female Tenant with the Notice of Direct Request Proceeding, via registered mail. Canada Post receipts were provided in the Landlord's evidence. The proof of service form for the male Tenant indicates the Landlord served the Notice of Direct Request to him on August 17, 2010 at 2:11 p.m., in person.

### Issue(s) to be Decided

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

### Background and Evidence

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 each Tenant; and
- A copy of the tenancy agreement was signed by all parties on May 20, 2009, for a fixed term tenancy effective June 1, 2009 which switched to a month to month tenancy after December 1, 2009. Rent is payable in advance of the first of each

month in the amount of \$725.00 and a security deposit of \$362.50 was paid by the Tenants; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 4, 2010, with an effective vacancy date of August 17, 2010 due to \$1,537.00 in unpaid rent which was due on August 1, 2010; and
- A notation on the Landlord's application that he is seeking \$1,537.00 which is comprised of \$1450.00 of rent (2 x 725.00) plus \$77.00 late fee plus NSF cheque.

Documentary evidence filed by the Landlords indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenant's door on August 4, 2010 at 6:25 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 August 4, 2010, which in the section "you have failed to pay rent in the amount of \$1,537.00 that was due on 01/08/2010 (Day Month Year)". The Landlords are seeking to end the tenancy due to this breach; however, the Landlords have the burden of proving that the Tenants were served with a 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

In this case I find that the 10 Day Notice issued by the Landlord does not meet the requirements of the Act as the Notice was issued listing "**rent**" of \$1,537.00 was due on August 1, 2010 and is now past due. The evidence supports outstanding rent is only \$1,450.00 and therefore if the August 2010 rent is unpaid, the Notice should display this amount and not \$1537.00. Late fees and bank fees, while they may be payable pursuant to the tenancy agreement and/or the Act or Regulation, they are not rent and cannot be listed on the 10 Day Notice as being late. These fees do not become payable

unit the rent is late and therefore do not become payable in this case until the second of the month.

As per the aforementioned I find the 10 Day Notice to End Tenancy for Unpaid rent is invalid and is of no force or effect. Having found the 10 Day Notice issued August 4, 2010, to be invalid, 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 August 4, 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: September 01, 2010.

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Dispute Resolution Officer