

## **DECISION**

Dispute Codes – OPR, MNR, MNSD, FF

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) 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 due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 3, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that 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 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and a third party on behalf of the tenant on January 12, 2007 for a fixed term tenancy beginning on January 13, 2007 and ending on July 30, 2007. The tenancy agreement stipulates that at the end of the fixed term the tenancy end and the tenant must vacate the rental unit;
- A copy of an altered Notice of Rent Increase dated either October 1 or March 31, 2009 for a rent increase starting on either February or July 2009 to a total rent of \$674.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 20, 2010 with an effective vacancy date of September 3, 2010 due to \$2,170.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of May, June, July, and August 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on August 20, 2010 at 11:43 a.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

As the landlord has submitted into evidence a tenancy agreement for a tenancy that ended on July 30, 2007 which ordered the tenant to vacate the rental unit the landlord has failed to submit any evidence that would allow me to determine if a tenancy currently exists and if it does what are the current terms of that tenancy.

Although the landlord also submitted a copy of a notice of rent increase to take effect either in February or July 2009, which implies there may be another tenancy agreement, no other terms of this current tenancy are available for this adjudication, such as the day in the rental period that rent is due, a material term to the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent.

### Conclusion

As a result of the above, I dismiss the landlord's application 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: September 14, 2010.

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Dispute Resolution Officer