



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **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 (Act)*, and dealt with an Application for Dispute Resolution dated September 2, 2010 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 7, 2010 the landlord served the tenants 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.

Section 59 of the *Act* requires a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. I find the landlord gave a copy of the application 5 days after making the application and therefore the tenant has not been served with notice of this proceeding in accordance with the *Act*.

#### 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on October 1, 2009 for a 1 year fixed term tenancy beginning on October 1, 2009 for the monthly rent of \$1,200.00 due on the 1<sup>st</sup> of the month and a security deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 5, 2010 with an effective vacancy date of August 15 due to \$2,400.00 in unpaid rent. The notice stipulates the tenants must move out of a rental unit that

is not the assigned rental unit according to the tenancy agreement or the landlord's Application for Dispute Resolution.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of July and August 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on August 5, 2010 at 10:00 am and that this service was witnessed by a third party.

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

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy on a date that is not earlier than 10 days after the tenant receives the notice.

The section goes on to say that the notice must comply with Section 52 of the *Act*. Section 52 requires, among other things, to have the notice give the address of the rental unit. As the 10 Day Notice to End Tenancy issued by the landlord on August 5, 2010 requires the tenants to vacate a rental unit that they do not have possession of, according to the tenancy agreement, I find the landlord's notice does not comply with *Act*.

### Conclusion

As the landlord has failed to serve the tenants with notice of this proceeding in compliance with the *Act* and since the 10 Day Notice to End Tenancy issued by the landlord does not comply with the *Act*, I dismiss the landlord's application in its entirety.

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 15, 2010.

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Dispute Resolution Officer