



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **INTERIM DECISION**

### Dispute Codes

OPR, MNR

### 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 September 13, 2010 the Landlord personally served the female Respondent with the Notice of Direct Request Proceeding at the rental unit. The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 13, 2010 the Landlord personally served the male Respondent with the Notice of Direct Request Proceeding at the rental unit.

Based on the written submissions of the Landlord, I find the Respondents have 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 submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant
- A copy of a residential tenancy agreement, which names both Respondents but appears to only be signed by the male Respondent. The agreement indicates

that the tenancy began on June 01, 2010 and that the rent of \$800.00 per month is due on the first day of each month

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on September 02, 2010 which declares that the Respondents must vacate the rental unit by September 12, 2010 unless the Respondents pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice declares that the Respondents owe rent, in the amount of \$800.00, that was due on September 01, 2010
- A signed copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which the Landlord stated that he personally served the female Respondent with the Notice at 11:45 a.m. on September 02, 2010. The Assistant Manager also signed the Proof of Service to indicate that she witnessed the service of the Ten Day Notice to End Tenancy.

On the Application for Dispute Resolution, the Landlord declared that the female Respondent was personally served the 10 Day Notice to End Tenancy on September 02, 2010 and that the Respondents did not pay rent of \$800.00.

### Analysis

Based on the evidence provided by the Landlord, I find that the Landlord entered into a tenancy agreement with the male Respondent that required the Respondent to pay monthly rent of \$850.00. I have insufficient evidence to determine whether the Landlord entered into a tenancy agreement with the female Respondent that required her to pay monthly rent of \$850.00.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was personally served on the female Respondent on September 02, 2010.

The purpose of serving a Notice to End Tenancy is to notify the person being served of their breach and notify them of their rights under the *Act*. The Landlord has the burden of proving that the tenant was served with the Ten Day Notice to End Tenancy in accordance with section 88 of the *Act*.

Section 88(a) of the *Act* authorizes a landlord to serve a Notice to End Tenancy, by leaving a copy with the person. As the Landlord has submitted insufficient evidence to show that the female Respondent is a tenant, I find that I have insufficient evidence to establish that the Notice to End Tenancy was personally served to a tenant.

Section 88(c) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(c) of the *Act*.

Section 88(d) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to a forwarding address provided by the tenant. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(d) of the *Act*.

Section 88(e) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The evidence shows that the Notice was left with the female Respondent however no evidence was submitted to show that she is an adult. I therefore have insufficient evidence to conclude that the Notice to End Tenancy was served in accordance with section 88(e) of the *Act*.

Section 88(f) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy in the mail box or mail slot for the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(f) of the *Act*.

Section 88(g) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by attaching a copy to a door or other conspicuous place at the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(g) of the *Act*.

Section 88(h) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by transmitting a copy to a fax number provided by the Tenant as a service address. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(h) of the *Act*.

Section 88(i) of the *Act* authorizes a landlord to serve a Notice to End Tenancy as ordered by the director under section 71(1) of the *Act*. There is no evidence to show that the Notice to End Tenancy was served in accordance with section 88(i) of the *Act*.

### Conclusion

Having found that the Landlord has failed to prove service of the Notice to End Tenancy, I find that a conference call hearing is required in order to determine the merits of this Application for Dispute Resolution. I therefore order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. 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: September 20, 2010.

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Dispute Resolution Officer