

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 Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 16, 2010, at 7:15 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit. 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

Is the Landlord 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 the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on July 23, 2009 for a month to month tenancy beginning August 1, 2009 for the monthly rent of \$750.00 due on 1st of the month and the Tenant paid a security deposit of \$375.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 3, 2010, with an effective vacancy date of September 13, 2010 due to \$550.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was left personally with the Tenant's mother on September 3, 2010, at 4:00 p.m. in the presence of a witness.

Analysis

The landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy was served in person to the Tenant's mother. Section 88 of the Act provides that service of documents, other than those listed in section 89, must be conducted as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service prescribed in the regulations.

The evidence supports the 10 Day Notice to End Tenancy was served to the Tenant's mother, however there is no indication where the service occurred or if the Tenant's mother is an adult who resides with the Tenant at the rental unit. Based on the aforementioned I find there is insufficient evidence to support that the 10 Day Notice was served in accordance with section 88 of the Act and therefore this application does not meet the requirements for the Direct Request Processes.

Conclusion

I HEREBY 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 24, 2010.

Dispute Resolution Officer