

## **Decision**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated August 17, 2010, and a monetary order for rent owed. The hearing was reconvened from a Direct Request Proceeding held on September 22, 2010 to be heard at a participatory hearing.

The tenant did not appear and the landlord was not able to confirm service by registered mail. However, the landlord testified that the Notice of hearing was mailed to the tenant on September 14, 2010. I accept that the Notice of Hearing was mailed to the tenant.

### **Preliminary Matter**

Section 89 imposes special rules for serving an application for dispute resolution, requiring service 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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

However Section 89(2) does permit an application by a landlord under section 55 [*order of possession for the landlord*], to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to

a door or other conspicuous place at the address at which the tenant resides, as well as personally or by mail.

In this instance, I find that the landlord mailed the Notice of Direct Request, but could not confirm that it was served by registered mail. I find that this method of service would only comply with the Act for the purpose of determining whether an order of possession is warranted, and is not considered to be adequate service for the portion of the application requesting a monetary order.

Accordingly, the portion of the landlord's application relating to the monetary order termination was not properly served in compliance with the Act and must be dismissed with leave to reapply. However, the direct request proceeding pertaining to the landlord's request for an Order of Possession will proceed.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated August 17, 2010, a copy of the resident ledger and a copy of the tenancy agreement. The landlord testified that the tenancy began on DT, at which time the tenant paid a security deposit of \$700.00 and Pet Damage Deposit of \$700.00. The landlord testified that the tenant failed to pay \$1,500.00 rent for the month of August 2010, but has since paid most of the arrears except for \$200.00 and was issued with receipts for "use and occupancy only". The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant did not pay the outstanding rent within 5 days to cancel the notice and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

**Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The portion of the landlord's application for a monetary order is dismissed 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: October 2010.

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Dispute Resolution Officer