

## **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 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 14, 2010 the landlord served the female tenant and on September 24, 2010 the landlord served the male 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 female tenant has been served with the Dispute Resolution Direct Request Proceeding documents, in accordance with Section 59 (3) of the *Act*.

Section 59(3) states 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. As the landlord failed to serve the male tenant within 3 days, I find the matter cannot proceed against the male tenant. I therefore dismiss application against the male tenant.

### 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 *Residential Tenancy Act (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 parties on August 28, 2009 for a month to month tenancy beginning on September 1, 2009 for the monthly rent of \$825.00 due on the 1<sup>st</sup> of the month and a security deposit of \$412.50 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 13, 2010 with an effective vacancy date of September 13, 2010 due to \$825.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of September, 2010 and that the male tenant was served personally with a 10 Day Notice to End Tenancy for Unpaid Rent on September 2, 2010 at 9:00 a.m. and 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

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on September 2, 2010 and the effective date of the notice is September 13, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$825.00** comprised of rent owed. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 04, 2010.

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Dispute Resolution Officer