



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

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 filed by the Landlord on October 29, 2010, 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 November 3, 2010, the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence.

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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on August 15, 2009, for a fixed term tenancy beginning September 1, 2009 and

switching to a month to month tenancy after February 28, 2010, for the monthly rent of \$1,150.00 due on 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 2, 2010, with an effective vacancy date of October 12, 2010 due to \$1,150.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates the Landlord served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent on October 2, 2010 at 7:00 p.m., in the presence of a witness.

Analysis

The Landlords provided evidence that the Tenants were served the hearing package on November 3, 2010; five days after the Landlord filed their application for dispute resolution and were issued the hearing documents.

I find that service of the Notices of Dispute Resolution were not effected in accordance with section 59(3) of the *Residential Tenancy Act* (the Act) which stipulates that notices of dispute resolution must be served to the respondent(s) within 3 days of filing the application. In this case service of the hearing documents needed to be initiated no later than November 1, 2010. Having found the service of documents not to have been effected in accordance with the Act, I dismiss the Landlords' claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: November 12, 2010.

Dispute Resolution Officer