



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 November 3, 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 8 2010, the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

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 Landlord and the male Tenant on May 27, 2010 , for a fixed term tenancy beginning June 1, 2010 and switching to a month to month tenancy after May 31, 2011, for the monthly rent of \$900.00 due on 1st of the month and a security deposit of \$450.00 was paid on May 1, 2010; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 19, 2010, with an effective vacancy date of October 29, 2010 due to \$900.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates the 10 Day Notice to End Tenancy was personally served to the male Tenant on October 19, 2010 at 3:00 p.m. in the presence of a witness.

Analysis

The Landlord provided evidence that each Tenant was served the hearing package on November 8, 2010; five days after the Landlord filed his application for dispute resolution and was 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 6, 2010. Having found the service of documents not to have been effected in accordance with the Act, I dismiss the Landlord's 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 16, 2010.

Dispute Resolution Officer