

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 February 1, 2011 the landlord served the tenants 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 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

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 *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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on September 1, 2010 for a 3 month fixed term tenancy beginning on September 1, 2010 for the monthly rent of \$910.00 due on the 1st and a security deposit of \$455.00 was paid. The tenancy agreement also stipulates that the tenants must vacate the rental unit at the end of the fixed term (November 30, 2010); and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 24, 2011 with an effective vacancy date of February 4, 2011 due to \$910.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of January 2011 and that the tenants were served a 10 Day

Notice to End Tenancy for Unpaid Rent personally on January 24, 2011 at 2:15 and that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 24, 2011 and the effective date of the notice is February 4, 2011. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

However, the tenancy agreement stipulates that the tenancy was to end and the tenants leave the rental unit on November 30, 2010. As that tenancy ended on that date the tenancy agreement submitted does not provide any indication as to the terms of the new tenancy that would have started on December 1, 2010.

In addition the tenancy agreement submitted indicates that rent is due on the "1st day of" but it does not indicate if that is the 1st day of the week or month so I am unable to establish, through the direct request process when rent is due.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety 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: February 09, 2011.

Residential Tenancy Branch