

## **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* (the "Act"), and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant. The Proof of Service document declares that on June 17, 2011 at 11 a.m., the Landlord's agent served the Notice of Direct Request Proceeding on the Tenant by courier to the rental unit. The Landlord provided a copy of the courier's delivery information indicating the documents were scheduled for delivery on June 20, 2011. Based on the written submissions of the Landlord, I find that the Tenant was sufficiently served with the Direct Request Proceeding documents on June 20, 2011, further to the provisions of Section 71(2)(b) of the Act.

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

- Is the Landlord entitled to an Order of possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding upon the Tenant;
- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenant;
- A copy of a residential tenancy agreement which was signed on October 14, 2010, indicating a monthly rent of \$600.00 due on the first day of each month;
- Copy of a tenant ledger; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 2, 2011, with an effective vacancy date of June 12, 2011, for \$1,025.00 in unpaid rent that was due on June 1, 2011.

The Landlord's Application for Dispute Resolution filed June 16, 2011, indicates that the Tenant owes rent in the amount of \$425.00 for the month of May and \$600.00 for the month of June, 2011.

The Landlord's documentary evidence indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the document on the Tenant's door at 3:00 p.m. on June 2, 2011. The Proof of Service document was signed by a witness.

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 from the date of service.

### **Analysis**

The Direct Request Procedure is a vehicle for a Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, by way of written submissions only. There is no opportunity for a Dispute Resolution Officer to question the Landlord and no opportunity for the Tenant to provide testimony.

I have several concerns with respect to the Landlord's application:

- 1) The Tenant Ledger indicates that the Tenant has been in arrears since December 1, 2010, and that payments made after December, 2010 were applied to outstanding rent, parking and late fees owed for the previous month. The Tenant paid a \$20.00 parking fee each month, which is not "rent". The Landlord seeks a Monetary Order for unpaid rent for the months of May and June, and it is not clear from the Tenant Ledger how much of the balance is attributable to rent only;
- 2) The Tenant Ledger indicates that the Tenant paid \$960.00 on June 2, 2011, which is the same day that the Notice was issued. There is no indication in the Landlord's documents whether that payment was made before or after the Notice to End Tenancy was served. There is no copy of a receipt for "use and occupancy only"; and
- 3) The name of the Landlord on the tenancy agreement, the Application, the 10 day Notice to End Tenancy and the Proof of Service of the 10 Day Notice all differ slightly.

For the reasons above, I find that this is not a suitable application to be made by Direct Request Proceeding. I dismiss the Landlord's application and grant the Landlord leave to reapply by way of participatory Hearing.

### **Conclusion**

The Landlord's application is dismissed with leave to reapply by way of participatory Hearing.

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: July 04, 2011.

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Residential Tenancy Branch