



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

Issue(s) to be Decided

1. Has service of the Notice of Direct Request Proceeding documents been served to the Tenants in accordance with 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 Request Proceeding for each Respondent which indicates they were served the documents via registered mail sent to the rental unit; and
- A copy of a residential tenancy agreement which was signed on April 9, 1996, by the Landlord and a female not named as respondent to this dispute; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued to the respondents named in this dispute on August 17, 2011, with an effective vacancy date of August 27, 2011, due to \$1,200.00 in unpaid rent; and
- A proof of service document which indicates the 10 Day Notice to End Tenancy was personally served to the female respondent to this dispute on August 17, 2011, at 8:19 p.m.; and
- The following is written on the proof of service document "These tenants are extremely difficult to serve as one has fled to Ontario and the other to Vancouver, leaving all possessions at subject address. I do not want to lose the rent for September 2011, accordingly I require an O.F.P. A.S.A.P. [sic]"

Analysis

The Landlord has made application through the Direct Request Process naming two respondents, neither of whom has signed the tenancy agreement which was provided into evidence.

In support of his application, the Landlord submitted a signed Proof of Service of the 10 Day Notice which indicates both respondents have fled the city. That being said the Landlord signed this document indicating he personally served the female respondent August 17, 2011, with the 10 Day Notice. There is no evidence before me to indicate when the respondents left town, if personal service was conducted at the rental unit prior to their departure, or if service was conducted at a different location.

The Notice of Direct Request Proceeding proof of service document declares that on August 31, 2011, the Landlord served each respondent with the Notice of Direct Request Proceeding via registered mail. The Landlord is seeking to end the tenancy due to a breach; accordingly the Landlord has the burden of proving the tenants were served with notice of the Direct Request Proceeding, in accordance with section 89 of the Act which states that if served via registered mail it must be sent to the address where the tenant(s) reside.

In the presence of evidence which indicates the respondents have fled town to reside in different cities I find service of the Direct Request Proceeding documents were not effected in accordance with section 89 of the *Act*.

Therefore, based on the above reasons, I have determined that this application does not meet the requirements of the Direct Request process and it is hereby dismissed.

Conclusion

I HEREBY DISMISS the Landlord's application.

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: September 08, 2011.

Residential Tenancy Branch