

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded 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 based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 28, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail and by posting it on the tenant’s door.

Section 90 of the *Act* determines that a document served by registered mail is deemed to have been served five days later and a document served by posting on the tenant’s door three days later.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and TSG on December 2, 2010, indicating a monthly rent of \$1,000.00 due on the 31st day of the month; and
- A copy of a an undated 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) with a stated effective vacancy date of September 26, 2011, for \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice by posting it on the tenant’s door, at 6:45

p.m. on September 16, 2011. Section 90 of the *Act* deems the tenant was served on September 19, 2011.

The Notice states that the tenant had five days from the date of service to pay the rent in full 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

I have reviewed all documentary evidence.

Although the landlord signed the 10 Day Notice, he did not place a date on that Notice. Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52(a) of the *Act* reads in part as follows:

52     *In order to be effective, a notice to end tenancy must be in writing and must...*

*(a) be signed and dated by the landlord tenant giving the notice;...*

Since the landlord failed to date this notice, the landlord has not complied with the statutory requirement established under section 52(a) of the *Act*. I find that there is an error in the landlords’ 10 Day Notice which invalidates that Notice. The landlord’s 10 Day Notice is of no effect. I dismiss the landlord’s 10 Day Notice without leave to reapply. If the landlord intends to end this tenancy for non-payment of rent, he will need to issue a new valid 10 Day Notice to the tenant.

I now turn to the landlord’s application for a monetary order. The landlord identified the tenant’s name in the application for dispute resolution, the proof of service of the notice of the direct request, the 10 Day Notice, and the residential tenancy agreement as SGT. Yet, the Canada Post Tracking receipt and the tenant’s signature on the residential tenancy agreement identified the tenant as TSG. Above the tenant’s name on the residential tenancy agreement, the tenant printed his name as another version of TSG.

I find that the inconsistencies in the tenant’s name are of sufficient concern that I am also unable to issue a monetary Order in the landlord’s favour. I dismiss this portion of the landlord’s application with leave to reapply as the correct name of the tenant is unclear from the documents presented by the landlord. I cannot issue a monetary Order nor can the landlord take action to implement a monetary Order to an incorrectly named tenant.

### Conclusion

I dismiss the landlord’s application for an Order of Possession based on the existing 10 Day Notice without leave to reapply.

I dismiss the landlord's application for a monetary Order 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*.