

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 25, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

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

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on September 26, 2010 for a tenancy beginning October 01, 2010 for the monthly rent of \$1,500.00 due on the 1st of the month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 03, 2011 with an effective vacancy date of October 13, 2011 due to \$3,355.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the months of September and October, 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenants rental unit on October 03, 2011 and therefore is deemed served three days later.

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.

The landlord's application states the tenant did pay \$1,500.00 on October 09, 2011.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on October 06, 2011 and the effective date of the notice is amended to October 16, 2011 pursuant to section 53 of the *Act*. However, the landlord has provided no evidence to show that the payment of \$1,500.00 received from the tenant on October 09, 2011 was accepted by the landlord for use and occupancy only and did not reinstate the tenancy.

### Conclusion

I dismiss the landlord's application with leave to re-apply. The landlord failed to provide any evidence to show that the amount of \$1,500.00 paid on October 09, 2011 was accepted for use and occupancy only and did not reinstate the tenancy.

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: October 31, 2011.

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Residential Tenancy Branch