

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 27, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord received the Direct Request Proceeding package on May 25, 2009 and initiated service on the next day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is personally served.

Based on the written submissions of the landlord, I find the tenant has been duly 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; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

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 parties on May 1, 2009 indicating \$450.00 per month rent due on the 1st day of the month, a deposit of \$220.00 was paid on May 1, 2009
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 15, 2009 with an effective vacancy date of May 15, 2009 for \$450.00 in unpaid rent due on May 1, 2009
- A May 18, 2009 note from the tenant to the landlord indicating he will make rent payments
- A copy of four receipts for rent paid by the tenant

The landlord has claimed \$450.00 in unpaid May rent. I note that the tenant has signed a tenancy agreement on May 1, 2009 for a fixed term tenancy which terminates on May 31, 2009.

Proof of Service of 10 Day Notice to End Tenancy

Documentary evidence filed by the landlord indicates that the tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord on May 15, 2009 at the rental unit address. The landlord provided a Proof of Service document signed by another tenant (SJ) and a second individual, who has signed as the tenant. This female (TR) has not been identified by the landlord.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy. I am unable to determine who the individual is that signed the Proof of Service document acknowledging receipt of the Notice to End Tenancy. The Proof of Service document indicates that the tenant was personally served, but the tenant acknowledgement portion of the document is signed by an individual who not identified by the landlord as an adult who apparently resides with the tenant.

Analysis

In the absence of the evidence of proof of service of the Notice to End Tenancy I find that the landlord has failed to establish that the tenant was served with the 10 day Notice to End Tenancy.

Conclusion

Having found that the landlord has failed to prove service of the 10 day Notice to End Tenancy, I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. Based on the foregoing, I find that a conference call hearing is required in order to determine the details of service of the 10 Day Notice to End Tenancy. Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve, with all other required documents, upon the tenant within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*.

Dated June 03, 2009.

Dispute Resolution Officer