

DECISION

Dispute Codes OPR MNR FF

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, a Monetary Order, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 20, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on July 25, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that the Tenant has been 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; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (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 all parties on August 11, 2008 for a month to month tenancy beginning October 1, 2008 for the monthly rent of \$750.00 due on 1st of the month and a deposit of \$375.00 was paid on or before September 11, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 2, 2009 with an effective vacancy date of July 12, 2009 due to \$750.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent in person and the Tenant acknowledged receipt of the notice by signing the proof of service form.

Analysis

The landlord submitted a copy of the Application for Dispute Resolution which provided that the Notice to End Tenancy was served by posting it on the Tenant's door however the Proof of Service of the 10 Day Notice form indicates that the Tenant was served personally with the 10 Day Notice to End Tenancy and there is a signature under Tenant's acknowledgement.

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 and how the service was conducted.

In the presence of contradictory evidence relating to the service of the 10 Day Notice to End Tenancy I find that the Landlord has failed to establish how service of the 10 Day Notice to End Tenancy was effected. Having found that the landlord has failed to prove

service of the 10 Day Notice to End Tenancy I have determined that this application be dismissed with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's application, 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*.

Dated: August 05, 2009.

Dispute Resolution Officer