

DECISION

Dispute Codes OPR MNR MNSD 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, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 21, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenants are deemed to be served the hearing documents on July 26, 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 Tenants have 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; an Order to keep the security deposit, and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent via registered mail. I note that the

Tenants' address listed on the 10 Day Notice to End Tenancy is not the same address that is listed for the Tenants on the tenancy agreement and on the Landlord's application for dispute resolution.

Analysis

The purpose of serving documents under the *Act* is to notify the persons 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 tenants were served with the 10 day Notice to End Tenancy which represents the Tenants' correct address.

In the presence of contradictory evidence relating to the issuance and completion of the 10 Day Notice to End Tenancy I find that the Landlord has failed to establish that the service of the 10 Day Notice to End Tenancy was effected in accordance with the *Residential Tenancy Act* and I have determined that this application be dismissed without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's application, without 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 06, 2009.

Dispute Resolution Officer