

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee from the Tenants. I have reviewed all documentary evidence submitted by the Applicant.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the first and last pages of a residential tenancy agreement
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 31, 2009, with an effective vacancy date of September 11, 2009.
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, upon the female Tenant;
- A copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, upon both Tenants;
- A copy of the Landlord's Application for Dispute Resolution, filed September 08, 2009; and

- A copy of a Proof of Service of the Notice of Direct Proceeding upon the male Tenant.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 8, 2009, the Landlord's agent served the male Tenant with the Notice of Direct Request Proceeding, by registered mail to the Tenants' residence. The Landlord provided a copy of the registered mail receipt and tracking number.

The Landlord submitted three signed Proofs of Service of the Notice to End Tenancy. One declares that on July 29, 2009, at 12:05 p.m., the Landlord's agent served the female Tenant with the Notice to End Tenancy by leaving it personally with the female Tenant at the Tenants' residence. Another Proof of Service document declares that on July 29, 2009, at 12:05 p.m., the Landlord's agent served both Tenants with the Notice to End Tenancy by leaving it personally with a person at the Tenants' residence. The third Proof of Service document declares that on August 31, 2009, at 1:25 p.m., the Landlord's agent served both Tenants with the Notice to End Tenancy by leaving it personally with a person at the Tenants' residence.

Analysis

The copy of the tenancy agreement provided by the Landlord is incomplete, as only Pages 1 and 6 were provided into evidence. Crucial information is absent. For example, there is no indication of what the monthly rent is under the tenancy agreement; whether the tenancy is a month-to-month tenancy or a fixed term lease; or whether a security deposit was paid, and if so, how much was paid and on what date.

Two of the three Proofs of Service of the Notice to End Tenancy predate the Notice to End Tenancy. The third Proof of Service is dated after the Notice was issued, but indicates that the Tenants were served through a third party. Section 88(e) of the Act provides that service may be affected by leaving a copy at the Tenants' residence with an adult who apparently resides with the Tenants, however the Landlord did not provide

any evidence to suggest that the person served was an adult, or that the person served resides with the Tenants.

The Proof of Service of the Notice of Direct Request upon the female Tenant was not in evidence. Although this is not fatal to the application, any Order that might flow from the application would not be against the female Tenant, as the Landlord has not proven service upon her.

In any event, the Landlord has failed to prove service of the Notice to End Tenancy on either of the Tenants, and its application is therefore dismissed with leave to reapply.

Conclusion

The Landlord's application is dismissed 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: September 28, 2009.
