



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### 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 for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via 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 evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act 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, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord submitted the following documentary evidence:

- 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 September 11, 2006 for a tenancy beginning October 1, 2006 for the monthly rent of \$880.00 due on 1st of the month and a security deposit of \$440.00 was paid on or about September 11, 2006; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 8, 2009 with an effective vacancy date of December 18, 2009 due to \$940.00 in unpaid rent.



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of November, 2009 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was delivered in person to another adult at the Tenant's residence. 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.

## Analysis

Section 88 of the Act sets out the various ways in which a Notice to End Tenancy may be served on a Tenant. Section 88(e) says that it may be left "at a person's residence with an adult who apparently resides with the person." The Landlords provided no evidence as to whether the individual they served with the 10 Day Notice was an adult who apparently resides with the Tenant. Consequently, I find that the Landlords have not established that the Tenant was properly served with that Notice.

As a part of the Direct Request Proceeding, the Landlord is also supposed to provide copies of Notices of Rent Increase to substantiate a rental amount that differs from the rental rate set out in the tenancy agreement. In this case, the Landlords have provided no evidence to substantiate the amount of rent arrears claimed.

## Conclusion

Having found that the Landlords have failed to prove service of the 10 day Notice to End Tenancy and due to the need for further evidence to substantiate the monetary order requested, I find that a conference call hearing is required. Consequently, I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. Notices of Reconvened Hearing are enclosed with this Decision for the Applicants to serve on the Tenant within **three (3) days** of receiving this Decision in accordance with section 88 of the Act.

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: December 31, 2009.

---

Dispute Resolution Officer