



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR CNL SS FF OLC

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

In his Application for Dispute resolution, the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, however it was clear from the information he provided at the hearing that he simply wanted to have the Landlord to comply with the *Act* in regards to how the tenancy should end, so this portion of his application has been set aside.

In his Application for Dispute resolution, the Tenant applied for authorization to serve documents in a different way than is required by the *Act*, however it was clear from the information he provided at the hearing that he did not need this authorization, so this portion of his application has been set aside.

In his Application for Dispute resolution, the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property, however it was clear from the information he provided at the hearing that he was not served with a Notice to End Tenancy for Landlord's Use of Property, so this portion of his application has been set aside.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Background and Evidence

The Landlord and the Tenant agree the Tenant is required to pay monthly rent in the amount of \$1,300.00.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 15, 2008, was personally served on the Tenant's mother, who the Landlord believed was residing at the rental unit, on August 05, 2008. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days or the Tenant pays the outstanding rent.

The Tenant stated that his mother does not reside at the rental unit, although he acknowledged that his mother did give him the Notice to End Tenancy on August 05, 2008.

The Tenant filed an Application for Dispute Resolution seeking to dispute the Notice on August 08, 2008.

The Tenant stated that he did not pay rent for August on time because he believed the Landlord was trying to sell the rental unit without proper notice to the Tenants. He stated that he did pay his rent for August and September on September 08, 2008.

The Landlord stated that the Tenant did provide them with three money orders last night, in the amount of \$2,599.00, last night, plus one penny. She stated that the Tenants delivered the payment with several other documents, and that she did not realize a payment had been made until after the Tenants left her home. At the hearing the Landlord stated that she wished to apply the payments to outstanding rent for August and September, but she did not wish to extend the tenancy past September. She did not discuss the payments or the terms of the tenancy with the Tenant when the payments were delivered to her, as she did not realize a payment had been made until after the Tenant left. The Landlord asked that the Tenancy be ended on September 30, 2008.

Analysis

Based on the Tenant's statement that he was given the Notice to End Tenancy by his mother on August 05, 2008, I find that the Tenant has been sufficiently served with the Notice for the purposes of this Act, pursuant to section 71(2)(c) of the *Act*.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant had the lawful

right to deduct any portion of the rent. I therefore find that the Tenant failed to pay the rent that was due for August of 2008. Section 46(1) of the Act stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent when it is due. As I do not find that the Tenant had a legitimate reason to not pay his rent when it was due, and the Tenant did not pay the rent within five days after receiving the Notice to End Tenancy, I find that the Landlord had the right to end this tenancy pursuant to section 46 of the Act.

Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has the right to end this tenancy, as the Tenant did not pay rent for August or September of 2008 when it was due. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I order that the Tenants must vacate the rental unit on or before 1:00 p.m. on September 30, 2008. I grant the Landlord an Order of Possession, as requested at the hearing, which is effective at 1:00 p.m. on September 30, 2008.

I find that the Tenant's application is without merit, and I dismiss the Tenant's application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Date of Decision: September 09, 2008
