



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on August 26, 2008. A copy of the receipt and the tracking number was provided. The Canada Post website shows the mail was unclaimed. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

At the hearing the Agent for the Landlord withdrew the application for the monetary Order for unpaid rent, as the Tenant has paid all of the outstanding rent.

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 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, 55, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 18, 2008, was personally served on the Tenant on August 13, 2008. This Notice to End Tenancy indicated that the tenancy was ending pursuant to section 35 of the *Act*.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of September 12, 2008, was personally served on the Tenant on September 02, 2008. This Notice to End Tenancy indicated that the tenancy was ending pursuant to section 46 of the *Act*. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$150.00

The Agent for the Landlord stated that the Tenant paid \$150.00 within five days after the Tenant is assumed to have received the Notice.

Analysis

Section 46 of the Act stipulates, in part, that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in the approved form when given by the landlord.

Section 10(1) of the Act stipulates that the director may approve forms for the purposes of the Act. Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead does not invalidate the form used.

In the circumstances before me I find that the Landlord served the Notice to End Tenancy, dated August 13, 2008, on a form from 2003, which is no longer the form that is approved by the director. I find that the form used by the Landlord significantly deviates from the form approved by the director, as this form states that the tenancy is being ended pursuant to section 35 of the *Act*, although the Landlord is actually seeking to end the tenancy pursuant to section 46 of the *Act*. Although I do not find that the Landlord was intentionally misleading the Tenant, I do find that the information contained on the Notice to End Tenancy is inaccurate, which affects the substance of the Notice. I therefore find that the Landlord did not comply with section 52(e) of the Act when he served the Tenant with an outdated Notice to End Tenancy.

As the Notice to End Tenancy, dated August 13, 2008, was served on an outdated form, I find that the Notice is of no effect. As this Notice is of no effect, I can not grant the Landlord an Order of Possession based on this Notice to End Tenancy.

Section 46(4) of the Act stipulates, in part, that a Notice to End Tenancy that is served pursuant to section 46 of the Act has no effect if the tenant pays the overdue rent within five days of receiving the Notice to End Tenancy. The evidence shows that the Tenant did pay the outstanding rent within five days of receiving the Notice to End Tenancy dated September 02, 2008. As the Tenant paid the outstanding rent, the Notice dated September 02, 2008 is of no effect. As the Notice has been automatically cancelled, I can not grant the Landlord an Order of Possession based on this Notice to End Tenancy.

Conclusion

I hereby dismiss the Landlord's application for an Order of Possession, as the Tenant has not been served with a Notice to End Tenancy that is enforceable.

As this tenancy has not ended, I hereby dismiss the Landlord's application to retain the Tenant's security deposit.

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

Date of Decision: September 23, 2008
