



Dispute Resolution Services

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

Decision

Dispute Codes: OPB, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he sent notification of today's hearing to the tenant by registered mail and provided a tracking number. A search of the tracking number showed that the tenant received the registered mail. Having been satisfied that the tenant was served in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession and award of the filing fee paid for this application.

Background and Evidence

The landlord provided as evidence prior to the hearing a letter signed by the tenant. The letter indicated that she would be moving out of the rental unit between September 1 and 15, 2008. The letter is dated August 1, 2008 although the landlord testified that he received it July 28, 2008.

The landlord testified at the hearing that the tenant vacated the rental unit September 7, 2008 and that he cashed a rent cheque to cover the rent for September 2008. The landlord testified that he is actively trying to re-rent the rental unit for the latter part of September.

The landlord testified that the tenant had a pet in the rental unit and he has incurred damages as a result. The landlord testified that the tenant has not provided him with a forwarding address.

Analysis

As the tenant has vacated the rental unit, the landlord no longer requires an Order of Possession and I do not provide one with this decision.

As the landlord's application indicates the nature of the dispute concerned an Order of Possession and not damages, I refused to hear the landlord's testimony concerning damages and informed the landlord of his right to make a separate application for dispute resolution with respect to damages.

In accordance with section 52 of the Act, a tenant that ends a tenancy must provide the landlord with notice in writing. The notice must be signed and dated by the tenant, give the address of the rental unit and state the effective date. The notice provided as evidence is signed and dated by the tenant and indicates the rental unit address; however, the effective date is a range of dates. Furthermore, section 45 of the Act requires that the tenant provide the landlord with an effective date that is not earlier than one month after the notice is given to the landlord, which means that a tenant may give more than one month's notice. Section 45 also requires that the effective date be no earlier than the last day of the rental period. In a month to month tenancy that date is usually the last day in the month. Where an effective date in a notice is not in compliance with the Act, the Act provides that the effective date is automatically changed to comply with the Act. Therefore, I find that the effective date automatically changed to read September 30, 2008.

As the effective date of the end of the tenancy is September 30, 2008, and the tenant vacated the rental unit weeks before that date, I do not award the filing fee to the landlord.

Conclusion

As an Order of Possession is no longer required, I do not provide one with this decision.

I dismiss, without leave, the landlord's request to recover the filing fee paid for this application.

September 9, 2008

Date of Decision
