



Dispute Resolution Services

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

Decision

Dispute Codes:

OPR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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 ask questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenants are required to pay monthly rent of \$1,375.00.

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 17, 2008, was posted on the front door of the rental unit on September 04, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$1,375.00 within five days after the Tenant is assumed to have received the Notice.

The Agent for the Landlord stated that the Tenants paid all of their outstanding rent on September 12, 2008.

Analysis

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on September 07, 2008.

Section 46 of the *Act* stipulates, in part, that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I find that the Tenants did pay their outstanding rent on September 12, 2008, which is five days after they are deemed to have received the Notice to End Tenancy. As the Tenants paid their outstanding rent within the legislated time period, I find that the Notice to End Tenancy has no effect, pursuant to section 46(4)(a) of the *Act*.

Conclusion

I hereby dismiss the Landlord's application for an Order of Possession, as I have found that the Notice to End Tenancy that they served on September 04, 2008 is of no effect.

I find that the Landlords application is without merit, and I also 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: October 28, 2008