



Dispute Resolution Services

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

Decision

Dispute Codes: OPR MNR FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the notice issued?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began approximately four years ago. Rent in the amount of \$889 is payable in advance on the first day of each month. On September 1, 2008 the tenant gave the landlord a rent cheque and a note asking that the landlord not cash the cheque until September 5, 2008. The landlord deposited the cheque before September 5, 2008, and it was returned for insufficient funds. The evidence of the landlord is that on September 11, 2008 the landlord posted on the tenant's door a notice to end tenancy for unpaid rent. The notice was issued on an outdated form from the year 2000 and it therefore references out-of-date legislation. The evidence of the tenant is that she never received that notice. On or about September 22, 2008 the tenant paid the landlord \$850 for September's rent, after she on her own initiative deducted \$39 from the rent to cover her NSF fees.

Analysis

Regarding the notice to end tenancy, section 52 of the *Residential Tenancy Act* requires that the notice be in the approved form. Under section 68 of the *Act*, if a notice is not in the approved form, I may amend the notice if I am satisfied that the tenant knew, or ought to have known, the information that was omitted from the notice, and in the circumstances it is reasonable to amend the notice. I find that in this instance the tenant denies ever having received the notice, and therefore in the circumstances it is not reasonable to amend the notice. As the notice is invalid, the landlord is not entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$39 in unpaid rent for September 2008. As the landlord's claim was partially successful, the landlord is entitled to recovery of half the filing fee, in the amount of \$25.

Conclusion

I dismiss the portion of the landlord's application regarding the order of possession, with the effect that the tenancy continues.

I grant the landlord an order under section 67 for the balance due of \$64. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 30, 2008.