



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD 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, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the beginning of the hearing the Agent for the Landlord withdrew the application for a monetary Order for unpaid rent, as all of the outstanding rent has been paid.

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 December 03, 2008. A tracking number was provided. The Canada Post website shows the mail was not picked up by the recipient. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

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, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that the Tenant is required to pay monthly rent of \$523.00 and that he paid a security deposit of \$252.50 on August 07, 2001.

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 December 02, 2008, was posted on the front door of the rental unit on November 19, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$548.00 within five days after the Tenant is assumed to have received the Notice. 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.

The Agent for the Landlord stated that the Tenant paid all of the outstanding rent from November on December 01, 2008, which was accepted for use and occupancy only. She stated that the Tenant has paid rent for December of 2008, which was also accepted for use and occupancy only.

Analysis

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on December 02, 2008, pursuant to section 46 of the *Act*.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the Tenant accepted that the tenancy has ended.

As the Tenant has paid rent until the end of December, I will grant the Landlord an Order of Possession that is effective at 1:00 p.m. on December 31, 2008.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on December 31, 2008. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain \$50.00 from the Tenant's security deposit in satisfaction of the monetary claim.

Dated: December 18, 2008