



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, MNR, and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on January 8, 2008. The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and the effective date, and whether a Monetary Order is due and the amount.

Background and Evidence

This tenancy began August 1, 2008 under a three year fixed term agreement. Rent was \$1,000 per month and the landlord holds a security deposit of \$500 paid on or about July 24, 2009.

During the hearing, the tenant gave evidence that he had already moved out of the rental unit on February 1, 2009 pursuant to a Notice to End Tenancy for landlord used served on December 17, 2008. That notice was defective to the extent that it is dated January 31, 2009 but sets an end of tenancy date of one-month earlier. While the transposition error on the dates is obvious, the notice is further compromised by the fact

that it was not served until December 17, 2008 and therefore, could not have taken legal effect until February 28, 2009.

There was considerable confusion surrounding this tenancy as the landlord had a sale in progress at the beginning and the purchaser had apparently agreed to take possession with the tenant in place. However, that sale appears to have not completed and this application was brought by the original landlord.

The tenant gave evidence that the landlord had reiterated to him more than once her preference that he vacate the rental unit and he stated that he had indicated his intention to comply in spite of having recently brought a new baby into the home.

There had also been confusion resulting from the fact that the landlord had given a downstairs tenant permission to use the washer and dryer, not in a common area, but in the subject tenant's suite. As well, there was conflict arising from the interim landlord approving painting by the tenant, later objected to by the applicant landlord.

Analysis

Given the lack of documented evidence from either party concerning the landlord's wish for the tenant to leave and concerning the tenant's advice that he would do so, I find it impossible to declare which party breached the agreement and the *Act* first and which did so to the greater degree.

It is agreed that the landlord served the two-month Notice to End for landlord use.

I accept the evidence of the tenant that he vacated in compliance with that notice and would therefore be entitled to the last month's rent free under section 51 of the *Act*.

As the tenant has vacated, the landlord's request for an Order of Possession is moot. The claim for January rent is money that would have been returned due to the notice for landlord use if the tenant had given 10-day notice, but again, he moved out in compliance with a defective notice to end.

Therefore, this application is dismissed without leave to reapply.

February 20, 2009

Dispute Resolution Officer