



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application from the landlord for an order permitting retention of the security deposit in partial satisfaction of the claim. The landlord's agent participated in the hearing and gave affirmed testimony.

The landlord's agent stated that as the tenant has vacated the unit and her whereabouts is presently unknown, the landlord is withdrawing the earlier application for an order of possession, a monetary order for unpaid rent and recovery of the filing fee.

Further, as the tenant's whereabouts is unknown, the landlord did not undertake to serve her with the application for dispute resolution and notice of hearing.

Issue to be Decided

- Whether the landlord is entitled to an order permitting retention of the security deposit

Background and Evidence

Pursuant to a written residential tenancy agreement, the six month term of tenancy was from July 1 to December 31, 2008. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$800.00 was payable in advance on the first day of each month, and a security deposit of \$400.00 was collected on June 17, 2008.

The tenant failed to pay rent for the month of February 2009. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 3, 2009.

Subsequently, the tenant did not pay rent for February, turned over the unit keys to the landlord on February 6, 2009, and left without providing a forwarding address.

Analysis

There were no documents submitted into evidence, however, based on the affirmed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice, did not apply to dispute the notice, and vacated the unit without providing a forwarding address. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

In relation to the statutory requirements for service of the application for dispute resolution and notice of hearing, section 89 of the Act speaks to **Special rules for certain documents**. Specifically, section 89(1) of the Act states:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

In the circumstances of this case, the landlord's agent testified that as the tenant's whereabouts remain unknown, no attempt was made to serve her with the application and hearing documents. In the result, as the tenant was not informed of the hearing

and the case before her, I am unable to issue an order permitting the landlord to forthwith retain the tenant's security deposit.

However, section 39 of the Act provides that the **Landlord may retain deposits if forwarding address not provided**, and states as follows:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

In the meantime, I dismiss the landlord's application for an order permitting retention of the security deposit with leave to reapply.

Conclusion

The application is dismissed with leave to reapply.

DATE: April 14, 2009

Dispute Resolution Officer