

DECISION AND REASONS

Dispute Codes:

OP, MNR, 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, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present 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 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, a monetary Order 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 tenancy agreement requires the tenant to pay monthly rent of \$500.00 per month due on by the first day of each month. The parties agree that the tenant took over this tenancy in November, 2007 when a previous tenant moved. There is no written tenancy agreement. The landlord submits that as the tenant moved in without the benefit of landlord screening he is not a tenant.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 17, 2009, was personally served on April 6, 2009. The tenant acknowledges he received the Notice. During the hearing the parties agreed that on April 22 or 23, 2009 the tenant paid the landlord the arrears owed and \$460.00 of May rent owed. The landlord issued receipts to the tenant, as required under the Act. The receipts did not indicate that the intent of the landlord was for use and occupancy only.

Analysis

In the absence of the landlord indicating receipt of rent money for use and occupancy only, on April 22 or 23, 2009 the landlord effectively reinstated the tenancy. I find the Notice to End Tenancy on April 6, 2009 is of no force or effect and is cancelled.

The tenant is warned that rent is due to be paid in full by the first of each month unless there is an Order of the Director allowing non-payment or due to emergency repairs as required under section 33 of the Act.

Conclusion

I have cancelled the Notice to End Tenancy issued on April 6, 2009 and it is of no force or effect. I have determined that the respondent has been a tenant of this landlord since November 2007.

Dated May 27, 2009.

Dispute Resolution Officer