

## **DECISION AND REASONS**

### **Dispute Codes**

OPR, MNR, MNSD, FF

### **Introduction**

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 12, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address at 7:42 pm. The tenant has signed the Proof of Service document, confirming receipt of the Proceeding Package. The landlord received the Direct Request Proceeding package on May 12, 2009 and initiated service on the same day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is served.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Sections of the Act and Regulations referenced in this decision have been appended.

### **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 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)*. I have reviewed all documentary evidence submitted by the landlord.

### **Background and Evidence**

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant
- A copy of a residential tenancy agreement which was signed by the parties on April 22, 2009 indicating \$800.00 per month rent due on or before the first day of each month. An addendum to the tenancy agreement indicates that rent is payable before the first day of each month for the entire two (2) months of this fixed-term agreement, beginning May 1, 2009
- A copy of a previous fixed-term tenancy agreement

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 1, 2009 with an effective vacancy date of May 13, 2009 for \$800.00 in unpaid rent due on April 30, 2009

The landlord has requested a monetary order for \$800.00 unpaid May, 2009 rent.

### Analysis

The tenancy agreement and addendum signed by the parties on April 22, 2009 contain rent payment terms which are inconsistent with each other. The tenancy agreement indicates rent may be paid on or before the first day of each month. The addendum to the tenancy agreement requires rent to be paid before the first day of each month, commencing on May 1, 2009.

In order for a tenancy term to be enforceable Residential Tenancy Branch Regulation 12 requires that the term be written so as to be easily understood by a reasonable person. Section 6 of the Act determines that if the term is not expressed in a manner that clearly communicates the rights and obligations under it, that term is unenforceable.

I find that the inconsistent terms are confusing and fail to clearly communicate the obligation related to the date rent is payable. The tenant could reasonably be expected to pay rent either the day prior to the first of a month, or on the first of the month. The landlord has issued a Notice to End Tenancy for Unpaid rent on the first day of May; a date which could reasonably be expected as the due date for the rent.

I find that payment of rent on or before the first day of each month as the term which can most reasonably be considered as the day that the rent is due. Therefore, I find that the Notice to End Tenancy issued on May 1, 2009 is of no force or effect.

I note that the addendum to the tenancy agreement contains terms which breach the Act. Clause 6(a) requires a deduction from the deposit prior to the end of the tenancy, which is a breach of section 20 of the Act. Clause 6 (g) indicates that the landlord will withhold heat from October 15 to April 15. Heat is defined as a service under section 1 of the Act. Heat is also considered a service which is essential to a tenancy and may not be restricted or withdrawn by a landlord. Clause 3 of the addendum requires a tenant to complete a condition inspection report within one week of occupancy. Section 23 of the Act requires an inspection at the time the tenant is entitled to possession or another mutually agreed upon day. Both parties need to be aware that these terms are unenforceable and non-binding. Neither party to a tenancy may contract out of the Act, as determined by section 5 of the Act.

### Conclusion

As the terms related to payment of rent contained within the tenancy agreement and the addendum are inconsistent I find that the Notice to End Tenancy issued on May 1, 2009 is of no force or effect and is cancelled. I have determined that the rent is due and

payable as indicated on the tenancy agreement; on or before the first day of each month. The landlord is at liberty to issue a valid Notice to End Tenancy and make a new application for dispute resolution.

Dated May 15, 2009.

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Dispute Resolution Officer

### **Disclosure and form of agreement**

**12** (1) A landlord must ensure that a tenancy agreement is

- (a) in writing,
- (b) signed and dated by both the landlord and the tenant,
- (c) in type no smaller than 8 point, and
- (d) written so as to be easily read and understood by a reasonable person.

(2) A landlord must ensure that the terms of a tenancy agreement required under section 13 [*requirements for a tenancy agreement*] of the Act and section 13 [*standard terms*] of this regulation are set out in the tenancy agreement in a manner that makes them clearly distinguishable from terms that are not required under those sections.

[am. B.C. Reg. 234/2006, s. 14.]

### **This Act cannot be avoided**

**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

## **Enforcing rights and obligations of landlords and tenants**

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable, or
  - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

## **Condition inspection: start of tenancy or new pet**

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.