

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing registered mail, sent September 9, 2009, the Tenant did not appear. Under the Act the Tenant is deemed to have been served five days after mailing. Refusal or neglect to receive the registered mail is not a ground for review. Therefore, I find the Tenant has been duly served in accordance with the Act.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlords, I find that the Tenant was served with a two month Notice to End Tenancy for the Landlords' use of the rental unit, on or about August 30, 2009, to be effective on October 31, 2009.

On September 1, 2009, the Tenant failed to pay rent as required by the tenancy agreement and Act. The Landlords spoke with the Tenant who said she was not paying rent for September, as she did not believe the Landlords would give her the free month of rent for October, as required under the two month Notice to End Tenancy.

On September 5, 2009, the Landlords served the Tenant a 10 day Notice to End Tenancy for unpaid rent. The Tenant did not pay the rent and did not dispute the Notice to End Tenancy. She did not move out by the effective date. She refused to communicate with the Landlords, and vacated the rental unit without any notice to the Landlords, sometime around the end of September 2009.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlords are entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenant failed to pay rent under the Act and tenancy agreement, failed to give notice she was vacating the rental unit, and therefore has breached the Act.

By her actions I find there is an implied waiver by the Tenant, which effectively relinquished the free month of rent she would have received under the two month Notice. By this implied waiver, I find she is *estopped* from claiming for the free month of rent.

I further find that the Tenant, by failing to provide the Landlords with any notice she was vacating the subject rental unit, caused the Landlords to suffer a loss of rent for the month of October. The Landlords also had to continue paying rent for their own rental unit, when they could have been in their own residential property.

Therefore, I find the Landlords have established a total monetary claim of **\$2,650.00** comprised of the rent owed for September 2009, the loss of rent for October, and the \$50.00 fee paid by the Landlords for this application.

I order that the Landlords retain the deposit and interest of **\$651.62** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,998.38**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 23, 2009.

Dispute Resolution Officer