

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. The landlord's agents participated in the hearing and gave affirmed testimony.

The tenant did not appear. Details related to service of the landlord's application for dispute resolution and notice of hearing are addressed below.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement
- Whether the tenant was properly served with the landlord's application for dispute resolution and notice of hearing

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy is from August 15, 2009 to August 31, 2010. Rent in the amount of \$810.00 is payable in advance on the first day of each month. A security deposit of \$405.00 was collected on or August 15, 2009. A move-in condition inspection and report were completed on August 29, 2009.

A "tenant ledger" submitted into evidence by the landlord shows that the tenant's rent cheque for September 2009 was NSF. Subsequently, the ledger records that the tenant issued a replacement cheque for September's rent. Following this the tenant's rent cheque for October 2009 was NSF.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated October 8, 2009. The notice was served by posting on the tenant's door on that same date. Only a copy of the first page of what is a two page notice was submitted into evidence; accordingly, it is not entirely clear whether the 10 day notice identified unpaid rent for September or October, even while in the landlord's submission compensation is being sought for unpaid rent for September 2009. Subsequent to service of the notice, the tenant made no further payment toward rent.

The landlord's agent stated that he himself filled out the only partially completed move-out condition inspection report in the absence of the tenant on October 22, 2009. The understanding of the landlord's agent is that the tenant had vacated the unit sometime before October 22, 2009, but the exact date of his departure is unknown.

As to a forwarding address, the landlord's agent confirmed that the tenant did not specifically provide one prior to vacating the unit. The mailing address used by the landlord in serving the application for dispute resolution and notice of hearing by way of registered mail, was the "present address" provided by the tenant on his "application for tenancy," which was completed and signed by the tenant on or about August 15, 2009; this address appears to be the address of the tenant's father.

The landlord's agent testified that the application for dispute resolution and notice of hearing package was returned to the post office on November 10, 2009, and then subsequently returned to the landlord on November 16, 2009. The landlord's agent testified that the envelope was marked "Moved." The Canada Post – Track – Result Detail Print submitted into evidence by the landlord shows that the package was "refused by recipient." The landlord's agent speculated that it may have been the tenant's father who declined to take delivery of the package addressed to the tenant.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agents, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent

dated October 8, 2009. The notice was posted on the tenant's door on that same date. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. 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. Thereafter, the tenant vacated the unit sometime in October 2009.

The Act describes how to give or serve documents. Section 89 of the Act speaks specifically to **Special rules for certain documents**, and provides in part as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 or 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]*.

Based on the documentary evidence and undisputed testimony of the landlord's agents, I find that the landlord's application for dispute resolution and notice of hearing package was not served pursuant to the above statutory provisions. Accordingly, I must dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply.

DATE: February 18, 2010

Dispute Resolution Officer