

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant's agent/advocate.

At the outset of the hearing the parties agreed that the tenant had already moved out and returned the keys to the landlord and the landlord amended his application to exclude the matter of the order of possession.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in August 2007 as a month to month tenancy with a current monthly rent of \$500.00 due on the 1st of the month and a security deposit of \$400.00 was paid in August 2007.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 7, 2010 with an effective date of June 17, 2010 for unpaid rent in the amount of \$500.00. He further stated he served this notice by posting it on the tenant's door on June 7, 2010. The landlord testified the tenant has not paid the rent.

The landlord testified he issued a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant on May 1, 2010 with an effective date of June 30, 2010 citing the landlord intends to occupy the rental unit and served it by posting it on the tenant's door.

The tenant further stated the tenant sent him a note on May 13, 2010 stating that because she didn't receive the notice until after May 1, 2010 the correct effective date should be July 31, 2010. The landlord did not provide a copy of this note into evidence and the tenant's advocate was not aware of this note.

The landlord testified he contacted the Residential Tenancy Branch and spoke with an Information Officer who confirmed the effective date would self correct to July 31, 2010 in accordance with Section 53 of the *Act*.

The tenant's agent testified that on June 17, 2010 the tenant provided written notice that she had intended to move out by June 30, 2010.

Analysis

Section 46 of the *Act* requires a tenant who has received a 10 Day Notice to End Tenancy for Unpaid Rent to either file an Application for Dispute Resolution or pay the rent owed within 5 days of receiving the 10 Day Notice.

Section 90 stipulates that when a notice is served on a party by posting it to the door of the rental unit it is deemed received within 3 days. As such, I find the tenant received the 10 Day Notice on June 10, 2010 which meant the tenant must pay her rent or file and application to dispute the notice by June 15, 2010.

As the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, which would self-correct to June 20 and the tenant is therefore responsible to pay the rent for June 2010.

Having said this, the landlord had originally issued a 2 Month Notice to End Tenancy for Landlord's Use under Section 49 of the *Act* and therefore is required, under Section 51 to provide the tenant compensation in the equivalent of 1 month's rent.

In accordance with Section 50 the tenant is entitled to provide the landlord with 10 day's notice to end a tenancy early if the landlord has issued a notice under Section 49, I accept the tenant has provided the landlord with a notice under Section 50 to end the tenancy by June 30, 2010.

Section 50 goes on to say that if the tenant issues a notice under this section it does not affect the tenant's right to the compensation under Section 51 and as the tenancy has

already ended prior to the start of July 2010 the landlord cannot waive the rent for July 2010 in satisfaction of this compensation.

As such, I find the landlord is still responsible to provide compensation to the tenant in the amount equivalent to one month's rent. As the tenant owes rent to landlord for the month of June and the landlord owes the tenant compensation in the equivalent of one month's rent I find the two cancel each other out.

Conclusion

As a result of the above findings, I dismiss the landlord's application in its entirety.

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: June 29, 2010.

Dispute Resolution Officer