

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord's agent

On the Application for Dispute Resolution the landlord had marked that he was seeking an order of possession based on a notice for unpaid rent. However, the agent confirmed at the outset of the hearing the landlord sought the order of possession based on a 1 Month Notice to End Tenancy for Cause. I accept the amendment to the application.

The landlord's agent also noted at the start of the hearing that he believes the tenant's may have vacated the rental unit and they may have done so as early as July 4, 2010. However, the landlord served the tenant via registered mail to the dispute address for this hearing.

For the purposes of the order of possession, I accept the landlord has sufficiently served the tenant with notice of this hearing, however on the matter of the monetary order sought, I find that if the tenants have indeed vacated the rental unit they would be unfairly prejudiced on the financial matters of the landlord's application.

I, therefore, amend the landlord's application to exclude the monetary matters from this hearing. As such, the landlord remains at liberty to file a separate Application for Dispute Resolution for any financial matters arising from this tenancy at a future date.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 47, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on June 2, 2009 for a 1 year fixed term tenancy that began on July 1, 2009 and scheduled to be converted to a month to month tenancy on July 1, 2010 for a monthly rent of \$1,025.00 due on the 1st of the month with a security deposit paid of \$512.50 on June 2, 2009.

The landlord also submitted a copy of a 1 Month Notice to End Tenancy for Cause dated May 6, 2010 with an effective vacancy date of June 30, 2010 citing the tenant is repeatedly late paying rent. The agent testified that in addition to months of February and March 2010 when the landlord issued 10 Day Notices for Unpaid Rent, the tenant also failed to pay rent for the months of May and June 2010.

The Notice states that the tenant had ten days to apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

Section 47 of the *Act* allows the landlord to end a tenancy by issuing a one month notice if the tenant is repeatedly late paying rent. I accept the landlord's testimony that the tenant has failed to pay rent on time on at least 4 occasions and as such I accept the landlord's cause to end the tenancy.

Based on the foregoing, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of the \$50.00 fee paid by the landlord for this application. In accordance with Section 72 (2)(b), I order the landlord may deduct this amount from the security deposit held.

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 04, 2010.

Dispute Resolution Officer