



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

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, the tenant and the current occupant of the rental unit.

The landlord noted, both in his application and in the hearing that he had also issued a 1 Month Notice to End Tenancy for Cause as the tenant has assigned the rental unit without the landlord's written permission.

The landlord had not applied for an order of possession based on that notice and did not submit a copy of that notice and as such, I declined to hear that matter at this hearing. The landlord, however, remains at liberty to file a separate Application for Dispute Resolution on that matter.

Issues(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 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on June 1, 2010 as a month to month tenancy with a monthly rent of \$850.00 due on the 1st of the month, a security deposit of \$425.00 was paid on May 22, 2010.

The landlord submitted a copy of an Appendix B – Notice to End a Residential Tenancy and cited that the Notice was issued under Section 26 and was because of the tenants failure to pay rent in the amount of \$850 due on October 1, 2010. This form was in use in 1996.

The parties acknowledge that the named tenant on the tenancy agreement no longer lives in the rental unit. The occupant of the rental unit indicated that she had been

unable to pay the rent as the landlord is difficult to locate when rent was due in October 2010 but that she eventually mailed him the rent.

The landlord confirmed in his testimony that the rent for October 2010 had been paid but that the rent for November was not yet paid. The occupant indicated she had not paid rent for November as she thought it would be dealt with at this hearing. The occupant indicated she could have the November 2010 rent available by Monday, November 22, 2010

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if the rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The section goes on to say that a notice issued under the section must comply with Section 52 which stipulates in order to be effective the notice must be given in the approved form. As the landlord used a form that is no longer approved and in fact, quotes old legislative references (i.e. Section 26 vs. Section 46) I find the landlord has issued an ineffective notice.

As it was clear the landlord and occupant have a strained relationship, I order that the tenant provide to the landlord rent sent via mail each month that would arrive prior to or on the day that rent is due.

I also order the occupant to ensure the landlord receives the rent for November 2010 no later than 1:00 p.m. on November 22, 2010 and should the occupant fail to provide this rent, the landlord remains at liberty to issue the tenant a 10 Day Notice to End Tenancy for Unpaid rent, in accordance with Section 46 of the *Act*.

Conclusion

For the reasons, noted above, 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: November 22, 2010.

Dispute Resolution Officer