

Decision

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

Introduction

This hearing was convened in response to the landlord's original application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. The landlord's agent participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the hearing package was "successfully delivered."

Requests from the landlord's agent during the hearing to amend the application were granted. Specifically, as the tenant has vacated the unit, application for an order of possession was withdrawn. Further, application for a monetary order as compensation for unpaid rent or utilities was replaced by application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from June 1, 2009 to May 31, 2010. Thereafter, tenancy continued on a month-to-month basis. Monthly rent at the end of tenancy was \$1,124.38 and was payable in advance on the first day of each month. A security deposit of \$525.00 was collected.

The landlord's agent testified that by way of undated letter from the tenant which was received by the landlord on July 21, 2011, the tenant gave notice to end the tenancy effective at the end of July 2011. A copy of the letter is not in evidence. A move-in condition inspection and report were subsequently completed on July 30, 2011 and, while a copy of the report is not in evidence, the landlord's agent testified that the tenant's forwarding address was provided on it. Under the circumstances, there was no apparent requirement for the landlord to post a 10 day notice to end tenancy dated

August 2, 2011 on the unit door. Despite advertising, new renters were not found until September 1, 2011.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the manner in which the tenant gave notice to end the tenancy did not comply with the above statutory provisions. In short, the tenant did not provide adequate notice to end tenancy. Accordingly, I find that the landlord has established a claim of \$1,174.38, which is comprised of \$1,124.38 in loss of rental income for August 2011, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$525.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$649.38 (\$1,174.38 - \$525.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$649.38. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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*.

DATE: November 18, 2011

Residential Tenancy Branch

