



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

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

Introduction

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on August 20, 2008. A tracking number was provided. The Canada Post website shows the mail was unclaimed. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

At the hearing the Landlord withdrew his application for a late rent payment, after it was determined that the tenancy agreement does not authorize the landlord to charge tenants for not paying rent on time, as is required by section 7 of the Residential Tenancy Regulation.

Issue(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; to keep 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, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

These parties have a written tenancy agreement that indicates the Tenant paid a security deposit of \$287.50 on November 01, 2006. The Landlord stated that the Tenant is required to pay monthly rent in the amount of \$595.00.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, was posted on the front door of the rental unit on August 02, 2008. The Landlord did not have a copy of the Notice to End Tenancy that he posted on the door. The Landlord submitted a copy of the Notice to End Tenancy that he posted on the door on August 02, 2008, which is dated July 02, 2008, and indicates that the Tenant must vacate the rental unit by July 12, 2008. The Landlord stated that he believes he misdated the Notice to End Tenancy that he posted on August 02, 2008.

The Landlord stated that the Tenant still owes \$595.00 in rent from August of 2008 and \$595.00 in rent from September of 2008.

Analysis

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me I find that the Landlord incorrectly dated the 10 Day Notice to End Tenancy that was posted to the Tenant's door on August 02, 2008. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*. I also find that the Notice is ineffective because the information on the Notice to End Tenancy was misleading. Specifically, I find that the Notice to End Tenancy end the tenancy indicates that the Tenant must move out of the rental unit by July 12, 2008, which is before the Notice was served on the Tenant.

In the absence of evidence to the contrary, I find that the Tenant owes rent for August and September, in the amount of \$1,190.00.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

As I have found the Notice to End Tenancy that was served on the Tenant was ineffective, I find that this tenancy has not been end pursuant to section 46 of the *Act*. I therefore dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve another Notice to End Tenancy for Unpaid Rent if the rent is not paid in full.

I find that the Landlord has established a monetary claim, in the amount of \$1,240.00, which is comprised on \$1,190.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,240.00. In the event that the Tenant does not comply with this Order, it may be

served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord has the right to retain any amount of this monetary Order that remains unpaid at the end of the tenancy from the security deposit paid by the Tenant.

Date of Decision: September 15, 2008
