

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on August 11, 2009. The Canada Post tracking number was provided in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on August 16, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Building Representative appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is a Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy is a month to month tenancy which commenced on November 3, 2007. The Tenant paid a security deposit in the amount of \$325.00 on November 3, 2007 and rent is payable on the first of each month in the amount of \$674.05.

The Landlord testified that the Tenant has failed to pay all of June 2009 rent and has not paid July, August and September 2009 rent. The Landlord stated that a 10 Day Notice to End Tenancy was issued to the Tenant on July 10, 2009 for \$1,042.40 of unpaid rent and posted to the Tenant's door.

The Landlord testified that a payment was received on August 12, 2009 in the amount of \$450.00. The Landlord argued that there was no evidence in the file to support that a receipt was issued for use and occupancy only but that it is the Company's policy to do so.

The Building Representative was called into the hearing to provide testimony in regards to the Tenant's August payment. The Building Representative confirmed that the Tenant made a payment in August and that the Landlord's head office issued the Tenant a letter for "use and occupancy only" as receipt of the Tenant's payment and that this letter was received by the Building Representative in late August. The Building Representative argued that she could not meet up with the Tenant personally to give the Tenant the letter so the Building Representative posted the letter for use and occupancy only to the Tenant's door, in late August, in the presence of the Maintenance Person.

The Landlord confirmed that if a letter was issued to the Tenant for use and occupancy only, a copy would be kept in the office and that the Landlord could pull the copy and fax it to the *Residential Tenancy Branch* immediately following the hearing.

Analysis

A fax was received from the Landlord at 11:31 a.m. on September 22, 2009, approximately five minutes after the close of the hearing. I note that the fax did not contain a copy of a letter to the Tenant stating payment received for use and occupancy only but instead included a note from the Landlord stating that the Tenant did not make a payment in August 2009, that the payment of \$450.00 was actually received in December 2008, and that the last payment made by the Tenant was received in

July 2009. The Landlord included a copy of a receivables report for this December 2008 payment and I note that the date received is listed on this additional report as 12/08/2009.

I also note that the Landlord's faxed note is in contradiction to the testimony provided by the Building Representative who testified to receiving a payment from the Tenant in August 2009 and posting a "use and occupancy" letter of receipt to the Tenant's door.

In the presence of the contradictory evidence and testimony, I find that the Landlord has failed to prove that the tenancy has not been reinstated. Based on the aforementioned I hereby dismiss the Landlord's application.

Conclusion

The 10 Day Notice to End Tenancy issued on July 10, 2009 is hereby cancelled and is of no force or effect.

I HEREBY DISMISS the Landlord's application without leave to reapply.

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: September 22, 2009.

Dispute Resolution Officer