



Dispute Resolution Services

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

Decision

Dispute Codes: CNR, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on October 17, the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenant testified that on September 27 he was served with a two-month notice to end tenancy with an effective date of November 30, 2008. The tenant testified that on September 28 he gave the landlord written notice that he intended to vacate the rental unit on October 31, 2008. The tenant did not pay rent for the month of October and on October 15 was served with a 10-day notice to end tenancy for unpaid rent. It is this notice that the tenant seeks to have set aside.

Analysis

Section 51 of the Act provides that when a landlord has served a tenant with a two-month notice to end tenancy, the tenant is entitled to receive the equivalent of one month's rent and that the tenant may withhold the last month's rent in lieu of compensation. Section 50 of the Act provides that a tenant who receives a two-month notice may give written notice to the landlord ending the tenancy before the effective date of the notice provided that the written notice is served at least 10 days prior to the tenant's proposed end of tenancy. Section 50 further provides that the giving of such a notice by a tenant does not affect the compensation due under section 51.

I find that the tenant has complied with the Act with respect to giving the landlord written notice ending the tenancy earlier than the effective date of the notice and find that the tenants were not required to pay rent in the month of October. Accordingly I order that the notice to end tenancy dated October 15 be set aside.

Conclusion

The notice to end tenancy is set aside. The tenants are entitled to recover the \$50.00 paid to bring this application. A formal order is enclosed herewith which may be filed in the Small Claims Court and enforced as an order of that court.

Dated October 29, 2008.