



Dispute Resolution Services

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

Decision

Dispute Codes:

CNR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 29, 2008, was personally served on the Tenant's son who resides with her at the rental unit on December 19, 2008. The Tenant acknowledged that she received the Notice to End Tenancy from her son on December 19, 2008. I find that the Notice to End Tenancy was served for the purposes of this Act, on December 19, 2008, pursuant to section 71(2)(b) of that *Act*.

The Notice to End Tenancy indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution or pays the outstanding rent within five days of receiving the Notice.

The Tenant stated that she filed her Application for Dispute Resolution on December 30th or 31st of 2008, which is more than five days after the Notice to End Tenancy was served on the Tenant.

The Tenant stated that she paid her rent for December on December 29, 2008, at which time the Landlord advised her it was being accepted for use and occupancy only, and that the payment did not serve to reinstate the tenancy. This payment was made more than five days after the Notice to End Tenancy was served on the Tenant.

The male Agent for the Landlord stated that they would be willing to extend the tenancy until February 28, 2009, and they requested an Order of Possession for that date.

Analysis

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended.

Conclusion

As I have determined that this tenancy ended pursuant to section 46(5) of the *Act*, and the Landlord agreed to extend the tenancy until February 28, 2009, I dismiss the Tenant's application to set aside the Notice to End Tenancy, and I grant the Landlord an Order of Possession, as requested at the hearing, that is effective at 1:00 p.m. on February 28, 2009.