



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, OLC, ATT, & FF

Introduction:

This hearing dealt with an application by the tenant seeking to set aside a 10 day Notice to End Tenancy due to non-payment of rent. I accept the evidence of the tenant that the landlord was served with notice of this hearing by registered mail on January 9, 2009. The landlord is deemed to have been served on the fifth day after the package was mailed pursuant to section 90(a) of the *Act*. The landlord did not appear for the hearing.

Issues to be Determined:

Should the 10 day Notice to End Tenancy be set aside? Is the tenant entitled to an Order allowing him access to the rental unit?

Background and Evidence:

In the absence of any evidence from the landlord I accept the tenant's evidence that this tenancy began on June 4, 2008. The rent was evaluated at \$1,200.00; however, as part of the tenant's employment his rent was reduced to \$800.00. According to the tenancy agreement this was a fixed term lease ending on January 3, 2009 at which point the parties marked off that the tenancy would end. However, I note that the parties did not initial the required part of the form confirming this requirement.

The tenant provided a letter dated December 31, 2008 from the landlord indicating that the lease is ending on January 3, 2009. The landlord states in this document that he will provide the tenant until January 10, 2009 to vacate the rental unit at no cost. The tenant was given a 10 day Notice to End Tenancy on January 6, 2009 due to non-payment of rent. The notice indicates outstanding rent for the sum of \$2,400.00.

The tenant also provide a copy of an e-mail confirming that the employment portion of his relationship with the landlord was ending effective January 6, 2009. The tenant also provided a copy of a bank receipt for the rent of \$800.00 dated January 9, 2009.

Analysis:

In the absence of any evidence from the landlord I am unable to confirm the validity of the 10 day Notice due to non-payment of rent. There is no evidence supporting that there is an outstanding sum of \$2,400.00 owed for rent. On this basis I grant the tenant's application and set aside the 10 day Notice to End Tenancy due to non-payment of rent.

At this point, given the evidence before me, I am satisfied that a tenancy agreement continues to exist between the parties. The tenancy agreement does not clearly establish the requirement that the tenant had to vacate on January 6, 2009 as the parties failed to initial the specific area in the contract which would crystallize this term. Pursuant to section 44(3) of the *Act* if the agreement does not specify that the tenant must vacate then the parties are deemed to have renewed the tenancy agreement on the same terms.

As there is a continuing tenancy agreement the landlord is required to provide the tenant access to and from the rental unit pursuant to section 30 of the *Act*. Failure to comply with the *Act* may result in damages payable to the tenant.

Conclusion:

I grant the tenant's application and set aside the Notice to End Tenancy.

Dated February 04, 2009.

Dispute Resolution Officer