



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: CNR

Introduction:

This hearing dealt with an application by the tenant seeking to have a 10 day Notice to End Tenancy set aside. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

There were a couple of issues from the start of the tenancy. The first issue was that the tenant failed to provide any evidence with his application, including a copy of the 10 day Notice to End Tenancy. The landlord also alleged that they were not served with a copy of the tenant's application and therefore was not aware of the particulars of the tenant's application.

Despite these issues I proceeded with the hearing and determined the dispute based on the oral statements of the parties.

Issue to be Determined:

Should the 10 day Notice to End Tenancy be set aside?

Background and Evidence:

The tenant was unable to tell me when the tenancy began or what the current monthly rent was. The tenant stated that the 10 day Notice to End Tenancy was dated February 10, 2009 and was posted to his door. He stated that he made two payments totally \$866.00 on 10th and 13th of February 2009. The tenant also claimed that he had a letter from the landlord indicating that if he paid the full amount owed by February 11, 2009 then the notice was to be set aside. The tenant did not provide a copy of this letter as evidence.

The landlord submitted that the tenancy began April 1, 2005 and that the current monthly rent is \$808.00. The rent is scheduled to increase effective May 1, 2009. The landlord confirmed the payments made by the tenant; however, submits that the payments were not made within the 5 days provided by the notice and *Act*. The landlord stated that the 10 day Notice to End Tenancy was dated February 1, 2009 and served on the same date by being posted on the door of the rental unit.

The landlord requested an Order of Possession effective **February 28, 2009 at 1:00 p.m.**

Analysis:

In the absence of any documentary evidence I have determined this dispute based on the verbal evidence of the parties. In all aspects I accept the evidence of the landlord over that of the tenant. The tenant's statements are not reliable given his failure to recall details and his confusion surrounding the actual dates of the 10 day Notice to End Tenancy.

I accept that the 10 day Notice to End Tenancy was posted to the tenant's rental unit door on February 1, 2009 and that the tenant is considered to have received the notice as of February 3, 2009. The tenant had 5 days to pay the outstanding rent or to file an application to dispute the notice or by February 8, 2009. The tenant did file this application within the 5 days but did not pay the outstanding rent until February 13th, 2009.

The tenant does not consider this to be sufficient grounds to end the tenancy. I disagree. The payment of rent, on time, is a material term of the tenancy agreement. It is one of the fundamental exchanges on which the tenancy is based upon. The more minor of breaches of this term is sufficient grounds for ending the tenancy.

I find that there is no basis on which to grant the tenant's application. Although the tenant dispute the notice, I am satisfied that the landlord had grounds to issue the Notice to End Tenancy and that the tenant failed to remedy his breach. I grant the landlord's request for an Order of Possession effective **February 28, 2009 at 1:00 p.m.**

Conclusion:

The tenant's application to have a 10 day Notice to End Tenancy due to non-payment of rent set aside is dismissed. I have granted the landlord an Order of Possession for the rental unit.

Dated February 17, 2009.

Dispute Resolution Officer