



Dispute Resolution Services

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Residential Tenancy Branch
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 for Unpaid Rent, a monetary Order for unpaid rent.

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 oral evidence, to ask 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 the Tenant is required to pay monthly rent of \$603.00 on the first day of each month and that the Tenant failed to pay any of the rent that was due on July 01, 2009.

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 July 23, 2009, was posted on the door of the rental unit. The Agent for the Landlord stated that he posted this Notice on July 13, 2009 and the Tenant acknowledged locating it on July 14, 2009.

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

On July 17, 2009 the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy.



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The Landlord and the Tenant agree that the Tenant has not paid any of the outstanding rent that was due on July 01, 2009. The Tenant stated that intends on vacating the rental unit on July 31, 2009.

Analysis

I find that the Landlord posted a Ten Day Notice for Unpaid rent on the door of Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant acknowledged receiving the Notice on July 14, 2009, I find that the earliest effective date of the Notice is July 24, 2009.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 24, 2009.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant has the right to deduct any portion of his rent. I therefore find that the Tenant failed to pay the rent that was due for July of 2009. Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due.

Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has the right to end this tenancy, as the Tenant did not pay rent for July of 2009. I therefore 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 on July 31, 2009.

I find that the Tenant's application is without merit, and I dismiss the Tenant's application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Dated: July 31, 2009.

Dispute Resolution Officer