



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes - OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and the landlord's agent and the tenant attended.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on February 2, 2002 for a month to month tenancy beginning on March 1, 2002 for a current total monthly rent of \$770.00 due on the 1st day of the month and a security deposit of \$372.50 was paid. The rent is subsidized and the tenant is responsible for \$388.00 per month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 22, 2009 with an effective vacancy date of January 01, 2010 due to \$400.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of January, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the tenant on December 22, 2009.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

During the hearing the tenant explained that she had been away and there had been a problem with her bank account. The tenant has subsequently paid all outstanding rent.

While I had reviewed all documentary evidence prior to the hearing, I re-reviewed the 10 Day Notice to End the Tenancy. The Notice was dated December 22, 2009 stating it was for rent due on January 1, 2010.

Section 46 of the Act states the landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the dated the tenant receives the notice.

As the notice outlines the rent was due on January 1, 2010, it could not have been issued on a day prior to January 1, 2010. I therefore find that the notice is ineffective.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply and find the tenancy in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 18, 2010.

Dispute Resolution Officer