

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Should the 10 Day Notice to End Tenancy be upheld or cancelled?

Background and Evidence

I heard undisputed testimony that the landlord personally served a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) upon tenant. The landlord testified that he personally served the tenant with the Notice on February 1, 2010 and that the tenant is required to pay rent on the 1st day of every month.

The tenant submitted that the Notice served upon her was on an old form. The landlord claimed the tenant owed rent from January 2010 when the Notice was issued. Neither party provided a copy of the Notice or any other documentary evidence in support of their respective positions.

The tenant raised the issue of service and dates that appear on the Notice. Without being able to see the Notice, I briefly explained the deeming provisions of section 90 to the parties. Should the other parties have additional questions, the parties are encouraged to contact the Residential Tenancy Branch for more information.

Analysis

A landlord may end a tenancy for unpaid rent where the rent has not been paid when due. The Act requires the landlord to issue a Notice to End Tenancy in the approved form and serve it upon the tenant in a manner that complies with the Act. Upon receipt of a 10 Day Notice, the tenant may pay the outstanding rent to nullify the Notice or dispute the Notice.

When a tenant is required to pay rent on the 1st day of the month under the terms of the tenancy agreement, the landlord cannot serve a Notice to End Tenancy on the 1st day of the month as the rent is not yet late for that month.

In the absence of evidence from the landlord to demonstrate the tenant failed to pay rent for January 2010 I find it more likely that the landlord issued the Notice for rent due for February 2010. In the absence of a copy of a Notice I cannot verify the validity of the Notice or determine whether it is on an approved form. Therefore, I find the landlord failed to provide sufficient evidence to establish that this Notice is valid and enforceable. Therefore, I cancel the Notice and find that this tenancy shall continue until such time it legally ends.

The landlord retains the right to issue another Notice on the approved form and serve it upon the tenant in a manner that complies with the Act. The tenant retains the right to dispute any Notice to End Tenancy served upon her or pay the outstanding rent within five days of receiving the Notice.

Conclusion

The landlord failed to show that a Notice to End Tenancy in the approved form was served upon the tenant and that rent was outstanding when the Notice was served upon the tenant. The Notice to End Tenancy was cancelled and the tenancy continues.

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: April 01, 2010.

Dispute Resolution Officer