

DECISION

Dispute Codes CNR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request to have a Section 46, 10 day Notice to End Tenancy cancelled.

Background and Evidence

On March 12, 2010 the landlord personally served the tenant with a Section 46, 10 day Notice to End Tenancy, which stated that there was \$1300.00 in rent outstanding for the month of March 2010.

The applicant testified that:

- He did receive the Notice to End Tenancy on March 12 however by March 23 he had completely paid off all the outstanding rent.
- He does however still have outstanding April 2010 rent totalling \$1370.00, and outstanding May 2010 rent totalling \$1500.00
- He believes that he will be able to pay off the full outstanding rent, sometime within the month of May 2010, and hopefully within the next two weeks.

The applicant is therefore requesting that the Notice to End Tenancy be cancelled as he has paid off the full amount of rent that was outstanding on the notice.

The respondent/landlord testified that:

- The tenant did not pay off the full March 2010 rent until well past the five day grace period and therefore the Notice to End Tenancy is still valid notice.
- The tenant has subsequently failed to pay \$1370.00 of April 2010 rent and has paid none of the \$1500.00 May 2010 rent.
- The tenant makes many promises to pay the rent but seldom keeps any of those promises.

The respondent landlord therefore requests that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

Analysis

When the tenant receives a Section 46, 10 day Notice to End Tenancy, the tenant has 5 days in which to pay the outstanding rent and thereby void the Notice to End Tenancy. If the tenant fails to pay the full outstanding rent within that 5 day grace period the Notice to End Tenancy remains effective.

Therefore since the tenant did not pay the full outstanding rent within the 5 day grace period I will not set the 10 day Notice to End Tenancy aside, and therefore the landlord does have the right to an Order of Possession.

Conclusion

The tenant's application is dismissed in full without leave to reapply and I have issued an Order of Possession to the landlords, that is effective two days after service on the tenant.

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: May 03, 2010.

Dispute Resolution Officer