

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant said that the Landlord indicated on her application was the property manager for the owner of the rental property at the time she filed her application. The Tenant said she served the owner of the rental property (Ali) with her Application and Notice of Hearing in person on May 19, 2010. Based on the evidence of the Tenant, I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on July 2, 2010. Rent is \$1,100.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy.

The Tenant said she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 28, 2010 posted to the rental unit door but could not recall when. The Tenant said she also received a 10 Day Notice to End Tenancy dated May 7, 2010 but could not recall when. The Tenant said she received a further 10 Day Notice to End Tenancy dated June 11, 2010 posted to the rental unit door.

The Tenant claims that she has no rent arrears. The Tenant argued that the owner's property manager recently made a list of payments which is incorrect in that it does not show some payments made by her. The Tenant claimed that the Landlord had many different people collect the rent and that she did not always receive a receipt for her payments. The Tenant said she made rent payments after she received each of the 10 Day Notices and was not given a receipt for her last payment made on June 25, 2010 for July 2010 rent.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply

for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notices to End Tenancy 3 days after they were posted. However, there was no evidence from the Landlord as to when the 10 Day Notices to End Tenancy were posted on the Tenant's door. Furthermore, by accepting rent from the Tenant after the effective date stated on those Notices, the Landlord is deemed to have reinstated the tenancy. In particular, I find that the Landlord accepted a rent payment from the Tenant on June 25, 2010, after the effective date stated on the 10 Day Notices to End Tenancy dated April 28, 2010, May 7, 2010 and June 11, 2010. Consequently, I find that those 3 Notices to End Tenancy were withdrawn by the Landlord and are of no force and effect.

The Tenant also argued that the Landlord's list of charges and payments was incorrect because the list omitted payments made by her for which she was not given a receipt. I find that it is unnecessary to make such a finding given my finding above that the Notices were cancelled by the Landlord's act of accepting rent from the Tenant after the effective date of the Notices (without issuing a receipt stating the rent was accepted for use and occupancy only).

Conclusion

The Tenant's application is granted and the tenancy will continue. 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: June 30, 2010.

Dispute Resolution Officer