



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

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

The landlord did not verbally request an order of possession.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy exists as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid. The parties disagree on the start date of the tenancy: the tenant contends the tenancy started in March 2010 and the landlord contends it started in September 2010.

Neither party submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent; however the landlord confirmed that he issued the notice on November 2, 2010 with an effective date of November 13, 2010 for unpaid rent of \$600.00 that was due on November 1, 2010.

The landlord testified he served the notice on the tenant by posting it on the rental unit door on November 2, 2010. The tenant confirms receipt of the notice.

The tenant contends that he has done work for the landlord over a long period of time and as a result the landlord had applied some of the tenant's earnings towards his rent. The tenant submitted in his application that he has sufficient earnings to cover rent until April, 2011.

The tenant provided no documentary evidence regarding his employment. The landlord's agent testified that this was the first he was hearing about these earnings that were to be applied to the rent.

Analysis

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

When one party makes an application to dispute an issue in a tenancy the burden of proof rests with the applicant. The applicant must provide sufficient evidence to substantiate his claim, in this case, that he has paid the rent. In the absence of any documentary evidence and in the face of the landlord's testimony that disputes the tenant's testimony, I find the tenant has failed to provide sufficient evidence to substantiate his claim.

Conclusion

For the reasons noted above, I dismiss the tenant's application in its entirety and find the landlord's 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2010 to be effective. I note that the effective date is already passed and the tenant should be vacating the rental unit immediately.

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: December 03, 2010.

Dispute Resolution Officer