



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MT, LAT

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent; for more time to set aside a Notice to End Tenancy; and for authorization to change the locks on the rental unit. At the hearing the Tenant withdrew the application for authorization to change the locks on the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant should be granted more time to apply to have the Notice to End Tenancy set aside.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 15, 2009 and that monthly rent of \$600.00 is due on the first day of each month.

The Agent for the Landlord and the Tenant agree that on November 02, 2010 the Tenant paid the Agent for the Landlord \$300.00 in cash, which represented a payment for outstanding rent from October of 2010.

The Agent for the Landlord and the Tenant agree that on November 02, 2010 the Tenant attempted to pay the Agent for the Landlord another \$300.00 in cash, which represented a payment for rent for November of 2010. The parties agreed that the Agent for the Landlord refused to accept this \$300.00 payment. The Agent for the Landlord stated that he refused this payment because he understood the Tenant was being evicted.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice for Unpaid Rent on November 03, 2010, a copy of which was submitted in evidence. The Notice to End Tenancy for had a declared effective date of November 14, 2010. The Notice declared that the Tenant owed rent of \$300.00 that was due on November 01, 2010.

The Tenant stated that she obtain a money Order, in the amount of \$300.00, and mailed that to the Landlord on November 05, 2010. The Tenant submitted documentation that corroborates this statement. The Landlord did not dispute this testimony.

The Tenant filed an Application for Dispute Resolution seeking to dispute the Notice to End Tenancy on November 05, 2010.

Analysis

The Tenant filed an Application for Dispute Resolution seeking to dispute the Notice to End Tenancy on November 05, 2010. As the Tenant filed the Application within two days of receiving the Notice to End Tenancy, I find there is no need to consider the Tenant's application for more time to apply to set aside a Notice to End Tenancy.

Section 46(1) of the *Act* stipulates that a 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 ten days after the date the tenant received the notice.

The undisputed evidence is that on November 02, 2010 the Landlord refused the Tenant's offer to pay rent of \$300.00 and that on November 03, 2010 the Landlord served the Tenant with a Ten Day Notice to End Tenancy that declared the Tenant had failed to pay rent of \$300.00.

Section 46(4)(a) of the *Act* stipulates that the Ten Day Notice to End Tenancy has no effect if the tenant pays the overdue rent within five days of receiving the Ten Day Notice to End Tenancy. I find that on November 05, 2010 the Tenant mailed the Landlord the outstanding rent of \$300.00 that the Notice to End Tenancy declared was due on November 01, 2010.

Given that the Agent for the Landlord refused a payment of \$300.00 when the Tenant attempted to make it on November 02, 2010, I find that it was reasonable for the Tenant to make this payment by mail. I deem the payment was sufficiently made on the date it was mailed, pursuant to section 62(3) of the *Act*, although it was not received by the Landlord on that date. I find that the Landlord's failure to accept the payment of \$300.00 on November 02, 2010 placed the Tenant at a significant disadvantage which necessitated a payment by mail and, therefore, the Landlord must accept the delay in payment that resulted.

As the Tenant paid the rent within five days of receiving the Notice to End Tenancy, I find that the Notice has no effect, pursuant to section 46(4)(a) of the *Act*.

Conclusion

As I have determined that the Notice to End Tenancy has no effect, I grant the Tenant's request to set aside the Notice to End Tenancy. I find that this tenancy shall continue until it is ended in accordance with the *Act*.

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 01, 2010.

Dispute Resolution Officer