



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, CNC

Introduction

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

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

At the outset of the hearing the landlord confirmed that he had not issued a Notice to End Tenancy for Cause but had issued only a Notice to End Tenancy for Unpaid Rent. As a result, I amend the tenant's application to exclude the matter of cancelling a Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began in January 2008 as a month to month tenancy for a current monthly rent of \$454.82 due on the 1st of the month. A security deposit of \$212.50 was paid at the start of the tenancy.

The landlord had issued a 10 Day Notice to End Tenancy for Unpaid Rent on January 2, 2011 with an effective vacancy date of January 12, 2011 for unpaid rent in the amount of \$454.82 that was due on January 1, 2011. The landlord checked off that the notice was posted on the door of the rental unit.

The landlord provided a written statement dated January 14, 2011 indicating that she had spoken with the tenant's wife on January 7, 2011 sometime between noon and 2:00 p.m. The landlord submits that she told the tenant's wife that a notice had been posted and that payment of rent needed to be made on that same day (January 7, 2011) "otherwise the time limit would run out).

This statement goes on to say that the landlord also ran into the tenant and his wife on January 9, 2011 between noon and 2:00 p.m. and they both wanted to pay his rent. The statement goes on to say that the landlord told the tenant that the notice time limit had run its course.

The landlord submitted an additional statement from their desk clerk, who also provided verbal testimony, indicating that the tenant approached her on January 9, 2011 wanting to pay the rent, not necessarily that date, but that the clerk told the tenant that the eviction notice had run its course but that he should contact the building manager, Glenn, the following day.

The tenant's wife testified that the tenant tried on two occasions on January 10, 2011, once in the morning and once in the afternoon to call Glenn but he was unable to reach him. The building manager testified that he was available all day and if he had not been in the office the tenant could have left a message on the available answering machine.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy for unpaid rent if rent is unpaid on any day after it is due. The landlord may issue a 10 Day Notice to End the Tenancy for Unpaid Rent and serve that notice on the tenant. The tenant then has 5 days from the receipt of that notice to either pay the rent in full or file an Application for Dispute Resolution to dispute the notice.

Section 88 allows the landlord to serve that notice by attaching a copy to a door or other conspicuous place at the address at which the person resides. Section 90 stipulates that a notice served by attaching it to a door is deemed served on the 3rd day after it is attached.

As per the tenant's written statement that he received the notice on January 5, 2011, which would have been on the 3rd day after it was posted allows the tenant until January 10, 2011 to either pay the rent or file an Application for Dispute Resolution.

Despite the landlord's testimony that the tenant did not contact the building manager on Monday, January 10, 2011 I find it reasonable that the tenant, after being told by two of the landlord's representatives that it was too late to pay the rent, did not make more vigorous attempts to contact the building manager on January 10, 2011.

As the tenant's agent in the hearing indicated that the tenant still had rent money available and wanted to pay the rent, I find the landlord failed to accept the rental payment offer made by the tenant and cannot therefore end the tenancy. I grant the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on January 2, 2011.

Having said this, however, I note that the rent is still due on this rental unit from this tenant for January 2011 and I therefore order the tenant to pay the rent in full within 3

days of receipt of this decision. If the tenant fails to pay the rent contrary to my order, the landlord remains at liberty to issue a new 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

For the reasons noted above, I find the tenancy remains in full force and effect.

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: January 26, 2011.

Residential Tenancy Branch