



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a 10 Day Notice to End Tenancy issued by the Landlord.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form.

The Tenant testified that he delivered the notice of hearing and application package to the Landlord's office on December 14, 2010. The Tenant testified that he dropped the package through the mail slot as the office is only open 2 days a week. The Tenant testified that the Landlord's Agent acknowledged receiving the hearing package.

I am satisfied that the Landlord was served in accordance with the Act and proceeded with the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the Notice to End Tenancy?

Background and Evidence

There is no written tenancy agreement, but the Tenant testified that this tenancy started seven years ago on an unknown date. The Tenant testified that he did not know the current monthly rent, but believed it to be \$580.00, and that he paid a security deposit in the amount of \$290.00, seven years ago.

I note that even though the Landlord did not appear to support the Notice, the evidence indicates the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 4, 2010, by posting on the door, for an effective move out date of December 14, 2010, for allegedly failing to pay rent due in the amount of \$3,163.00 on or before January 1, 2009. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. I note the effective date

indicated on the Notice is ineffective and automatically corrects under the Act to December 17, 2010.

The Tenant testified that he was not sure when he received the Notice as he was tending to a family emergency and because he suffers from a medical condition which impacts his functioning. The Tenant provided a statement from his health care provider in support of this statement.

The Tenant testified that he does not know the full amount of rent arrears, if any, but that he has in place a long term agreement with the former resident manager to pay extra on any arrears when he was able.

The Tenant testified that he is paying in full each month and has been for several years, but he believes the Notice was issued to him because of noise complaints, which he denied.

The Tenant testified that since the Notice was issued, he paid the January 2011 rent and has not been given a receipt for the payment. The Tenant testified that he is never issued a receipt for rent payments.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of the Landlord to defend the Notice, the Tenant's testimony and evidence is acceptable. While I find there is no clear date of service of the Notice by the Landlord, the evidence indicates that the Tenant should have filed for dispute resolution, according to section 89 of the Act, by December 12, 2010. Section 71 of the Act permits that I may make an order that a document not served in accordance with section 89 was sufficiently served. The provision of section 71 is discretionary and in this case I order the Application sufficiently served due to the Tenant's medical condition.

Additionally, in the absence of proof by the Landlord, I find that the Landlord has not established that the Tenant has missed any payment of rent and has not provided sufficient evidence and testimony necessary under the Act to end the tenancy.

Section 11 of the Residential Tenancy Guidelines provides that if a landlord accepts the payments of rent for the period after the effective date of the Notice, then the intention of the parties will be an issue. According to the guidelines, intent can be established by evidence when:

- The receipt shows the money was received for use and occupancy only
- The landlord specifically informed the tenant that the money would be for use and occupation only
- The conduct of the parties indicates intention.

I find that the Landlord did not issue a receipt stating for use and occupancy only or advise the tenant upon accepting the payment that this was for “use and occupancy only.”

I also find that the conduct of the Landlord in accepting full rental payment for January 2011 indicated to the Tenant that the tenancy was reinstated.

Given the above I find the Notice to not be valid and that tenancy was reinstated. Therefore I find the 10 Day Notice to End Tenancy for Unpaid rent issued by the Landlord is not valid and not supported by the evidence and **I order that the Notice be cancelled.**

Conclusion

The Landlord's 10 Day Notice to End Tenancy is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

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 12, 2011.

Residential Tenancy Branch