



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes SS OPR OPC MNR MNDC MND FF

Introduction

At the outset of the hearing the Landlord testified that he was withdrawing his request for substitute service.

Issue(s) to be Decided

1. When is the 10 Day Notice to End Tenancy deemed served to the Tenants?
2. Has the Landlord filed his application prematurely?

Background and Evidence

The Landlord confirmed he issued the Tenants a 10 Day Notice to End Tenancy which was served by posting a copy on the Tenants' door and a second copy placed underneath the door on February 6, 2011.

The Landlord filed his application for dispute resolution via the internet on February 8, 2011. The Landlord was contacted via e-mail and advised to contact the *Residential Tenancy Branch* to clarify if he had made his application too soon.

Analysis

Section 46 (1) of the Act states 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 10 days after the date the tenancy receives the notice. In this case the notice was served by posting it to the Tenants' door on February 6, 2011. Therefore the notice is deemed received three days later, February 9, 2011, in accordance with section 90 of the Act and the Tenants had until February 14, 2011, five days later, to pay the rent in accordance with the notice.

That being said the Landlord's application should not have been filed until after February 14, 2011. Based on the aforementioned I find the Landlord's application dated February 8, 2011 to be premature and is therefore dismissed, with leave to reapply.

The 10 Day Notice to End Tenancy issued February 6, 2011, has not been cancelled.

Conclusion

I HEREBY DISMISS the Landlord's application, with leave to reapply.

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: February 23, 2011.

Residential Tenancy Branch