



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 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy?

Background and Evidence

On February 9, 2011 the parties participated in a dispute resolution proceeding under file no. 766642. As part of a mutual agreement the tenant was to pay rent of \$653.40 per month for March and April 2011. Both parties agreed that rent is due on the 1st day of each month. The landlord was paid only \$593.40 for March 2011 and on March 1, 2011 served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating \$60.00 was outstanding. The tenant disputed the Notice on March 2, 2011 but has not yet paid the outstanding rent of \$60.00.

The tenant attempted to introduce other evidence related to the mutual agreement reached at the previous hearing; however, I refused to hear those issues as it did not pertain to the unpaid rent.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on "any day after the day [rent] is due".

In this case the landlord issued the 10 Day Notice on the day rent was due meaning when the Notice was issued the rent was not yet late. I find that the Notice to End Tenancy served upon the tenant on March 1, 2011 was invalid and of no force or effect. Therefore, I grant the tenant's request and cancel the Notice.

Tenant remains obligated to pay \$60.00 to the landlord for March 2011 and the landlord is at liberty to issue another 10 Day Notice to End Tenancy for the outstanding rent.

Conclusion

The Notice is cancelled and this tenancy shall continue under the terms of the mutual agreement previously reached.

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: March 15, 2011.

Residential Tenancy Branch