



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2011 and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 6, 2011 however the Landlord refused to accept service of it and the hearing package was returned to the Tenant on April 13, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if the intended recipient refuses to accept the mail. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

The Tenant said the rental property has a main house, a small house and a work shop. The Tenant said he initially rented the small house from the Landlord in July 2008 but two years later moved into the main house and entered into a tenancy agreement with the Landlord. The Tenant said rent is \$950.00 per month payable in advance on the 1st day of each month plus utilities.

The Tenant said he entered into a separate verbal agreement with the Landlord to rent the workshop on the property for business purposes for \$650.00 per month. The Tenant said the workshop had major leaks in the roof which the Landlord promised to fix but never did. The Tenant said some of his inventory was damaged by water leaking into the workshop and he was concerned that it could pose a safety hazard. Consequently, the Tenant said he advised the Landlord by e-mail on March 14, 2011 that he would not longer rent the work shop.

The Tenant said he then received a 10 Day Notice to End Tenancy from the Landlord by registered mail on March 28, 2011 claiming that he had rent arrears of \$650.00. The Tenant said he paid March 2011 rent for the rental unit in full on March 1, 2011 and claimed there are no rent arrears for any other month.

Analysis

In the absence of any evidence from the Landlord to the contrary, I find that the \$650.00 stated as rent arrears on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2011 is for the workshop on the rental property. However, I find that the workshop is not part of the Parties' residential tenancy agreement but rather the subject matter of a separate commercial agreement. Section 2 of the Act says that the Act applies **only to residential tenancy agreements** and therefore, I find that the Landlord cannot end the residential tenancy on the grounds that rent is unpaid for the workshop under the separate commercial agreement.

In the absence of any evidence from the Landlord to the contrary, I find that there are no rent arrears with respect to the rental unit. As a result, the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2011 is cancelled and the tenancy will continue. As the Tenant has been successful in this matter, he is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee he paid for this proceeding and I Order pursuant to s. 72(2) of the Act that he may deduct that amount from his next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is granted. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2011 is cancelled and the tenancy will continue. 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: April 20, 2011.

Residential Tenancy Branch