



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

Introduction

This conference call hearing was convened in response to the tenants' application for cancellation of a 10 Day Notice to End Tenancy and for more time to make an application to cancel the said notice. By virtue of the nature of this hearing, it is not necessary that I consider the request for more time.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the Notice to End Tenancy?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the month to month tenancy started in September 2010. Each tenant pays \$375.00 for a monthly combined rent of \$750.00.

Through an interpreter, the landlord testified that the tenants have not paid rent for March 2011. The parties agree that as of April 2011, the landlord receives rent directly from Social Services; however for March the landlord stated that he went several times to the rental unit but that the tenants did not answer. He said that he endeavoured to collect the rent before leaving for Taiwan mid-March. The tenants argued that the

landlord came and that they paid rent cash onsite for March, but that they did not get a receipt. Both tenants acknowledged receipt of the landlord's 10 Day Notice to End Tenancy dated May 20th, 2011; one tenant was served personally, and the other by posting the notice on the tenant's door.

Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The notice in this matter was served to the tenants on May 20th, 2011 and the date by which the tenants should have filed an application to hear the merits of their case was May 25th, 2011. The tenants filed on June 23rd, 2011, nearly a full month past the statutory time line; therefore the notice is valid and allowed.

Conclusion

The tenants' application is dismissed. At the hearing, the landlord did not make an oral request for an order of possession pursuant to Section 55(1) of the Act; if necessary, the landlord may make an application for dispute resolution and request an order of possession.

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: July 19, 2011.

Residential Tenancy Branch