



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a 10 day Notice to End Tenancy.

The tenant and agent for the landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the 10 day Notice to End Tenancy?

Background and Evidence

The testimony indicates that this month to month tenancy began on May 1, 1996, monthly rent is currently \$1,290.00 and the tenant paid a security deposit of \$537.50 on April 23, 1996.

The landlord's testimony and the evidence show that the landlord served the tenant a 10 day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 6, 2011, by registered mail. 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. The effective date indicated on the Notice is ineffective and automatically corrects under the Residential Tenancy Act (the "Act") to June 21, 2011.

The tenant did apply to dispute the Notice. The agent for the landlord provided affirmed testimony that the tenant has not the rent due listed on the Notice and currently owed for July 2011.

The tenant acknowledged receipt of the Notice and that he did not pay the outstanding rent. However, the tenant stated that due a serious personal injury he has not had an

income since May 2011 and has been unable to pay the rent, although he stated he will be paying all amounts owed when he has returned to health.

During the hearing, the landlord stated that she intended to file for dispute resolution seeking an order of possession.

Analysis

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

Where tenants fail to pay rent when due, the landlord may serve tenants with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, tenants must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within five days. Where a Notice is disputed, the tenant must be able to show that he does not owe to rent to the landlord or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued, that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice and the tenant did not establish that he had the legal right to withhold the rent owed.

Conclusion

Due to the above, the tenant's Application for Dispute Resolution is **dismissed** as the Notice to End Tenancy issued is valid.

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 11, 2011.

Residential Tenancy Branch