



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 seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord. Both parties had witnesses available for the hearing but no witnesses were called upon to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began on July 1, 2011 as a month to month tenancy for a monthly rent of \$675.00 due on the 1st of each month with \$168.75 of the total \$337.50 security deposit being paid.

The tenant submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 9, 2011 with an effective vacancy date of July 19, 2011. The notice indicates that the landlord had issued the notice as the tenant had failed to pay ½ of the security deposit in the amount of \$168.75.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy with a 10 day notice if rent is unpaid on any day after it is due in accordance with the tenancy agreement. Section 1 of the Act defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include a security deposit.

Based on the evidence before me, I accept the landlord has issued a 10 Day Notice to End Tenancy for Unpaid for an unpaid portion of a security deposit. As a security deposit is specifically precluded from the definition of rent and Section 46 only allows

the landlord to end the tenancy if any portion of rent is unpaid, I find the landlord has issued a notice to end tenancy that is not compliant with the *Act*.

Conclusion

For the reasons noted above, I grant the tenant's Application and find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 9, 2011 to be ineffective.

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: August 18, 2011.

Residential Tenancy Branch