



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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 August 16, 2011.

The Tenant filed his Application for dispute resolution on August 24, 2011 and received his hearing packages on August 26, 2011. A note from an Information Officer written to the file on August 26, 2011 states that because the hearing was only 5 days away the Tenant was given "strict instructions" to serve the Respondent with his hearing package "in person as soon as possible." The Tenant denied that he was given these instructions and instead served the Respondent with his hearing package by registered mail 2 days before the hearing. I note that the Tenant mailed his hearing package to the Respondent's agent even though she resides in the same rental property as the Tenant. Section 90(a) of the Act says that a document delivered by mail is deemed to be received after 5 days. According to the Canada Post online tracking system the Respondent did not receive the Tenant's hearing package.

As a result, I find that the Respondent was not served with the Tenant's hearing package as required by s. 89 of the Act and his application is accordingly dismissed. The 10 Day Notice submitted as evidence by the Tenant shows that it was posted to the rental unit door on August 16, 2011. Pursuant to s. 90(c) of the Act, the Tenant was deemed to receive it 3 days later and therefore the effective date of the Notice is amended to August 29, 2011. Consequently, the time limits for the Tenant to re-apply to cancel a 10 Day Notice under s. 46(4) and s. 66(3) of the Act have now expired and for that reason, the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. 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 31, 2011.

Residential Tenancy Branch