



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, FF

Preliminary Matter

During the hearing I explained that the critical matter before me was the tenant's application to cancel the Notice ending tenancy. I have determined that I would not deal with the request that the Landlord be Ordered to comply with the Act; therefore that portion of the application was dismissed with leave to reapply.

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on September 21, 2011, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 15, 2009; rent is due on the first day of each month. The parties agreed that effective February 1, 2011; the rent was lowered from \$2,500.00 per month to \$2,250.00 per month.

A copy of a January 7, 2011, letter was supplied as evidence setting out the rent payment agreement; the note indicated that the rent reduction from \$2,500.00 to \$2,250.00 was to continue for a period of 6 months and that in July, 2011; the account would be reviewed and rent owed would be discussed. The parties agreed that they did not meet to discuss the rent returning to the previous amount of \$2,500.00; the tenant paid \$2,250.00 in August, 2011. The parties also agreed that no discussion of the total amount of rent owed was mentioned until the tenant received the 10 Day Notice ending tenancy.

The tenant confirmed that he did not pay any of September rent until October 1, 2011; when he paid \$2,275.89. This amount consisted of \$2,250.00 in rent owed September 1, 2011, plus fees.

The tenant submitted an email sent to the landlord on September 21, 2011, indicating he had talked with the landlord the day previous, that his September rent cheque had been mailed without a stamp, returned and mistakenly placed in the recycling.

The tenant confirmed receipt of the 10 Day Notice Ending Tenancy for Unpaid Rent on September 22, 2011. The Notice, which included a copy of the tenant ledger, was sent via registered mail on September 21, 2011.

The tenant confirmed that he completed an application for dispute resolution on September 26, 2011 and submitted the application on September 28, 2011.

The tenant did not apply for more time to make his application; however, I heard from the tenant that he was new to the process and had not been prompted to apply requesting more time. The tenant did not express any other reasons for applying on September 28, 2011, other than he was not clear on the required process.

The landlord has been paid October, 2011, rent in the sum of \$2,250.00.

The landlord stated the property owner had not provided him with authority to reach a mutually settled agreement; the tenant does not wish to vacate the unit.

Analysis

I have made no determination in relation to rent that is currently owed; that matter will be settled should the landlord submit an application for rent arrears or when the parties come to a mutual agreement.

The tenant confirmed receipt of a Ten (10) Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 30, 2011; that he received via registered mail on September 22, 2011. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,775.89 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move

out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant submitted his application disputing the Notice on the 6th day after having received the Notice. The tenant did not pay any rent until October 1, 2011. Whether rent is \$2,500.00 per month or \$2,250.00 per month; it is clear that the tenant did not pay the rent when it was due on September 1, 2011, and that he did not pay any rent within 5 days of September 22, 2011, the date he received the 10 Day Notice. A mistake by the tenant, such as failing to place a stamp on postage, is not contemplated by the Act; a tenant must ensure that rent is paid on the day it is due.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant received this Notice on September 22, 2011, I find that the earliest effective date of the Notice is October 2, 2011.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 2, 2011.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not pay any rent within 5 days and has not provided any evidence that supports his claim the Notice should be cancelled; such as proof of payment within 5 days. The tenant did not apply requesting more time to cancel the Notice; however, the reasons provided by the tenant, that he did not understand the process, is not sufficient to provide more time for an application. The Notice clearly indicates that rent must be paid within 5 days or that tenant must dispute the Notice within 5 days; the tenant did neither.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; October 2, 2011.

The landlord has accepted a payment in the sum of \$2,250.00 for October, 2011. If the landlord had wished to reinstate this tenancy I find that the landlord had the opportunity to approach the tenant in order to reach some sort of mutual agreement in relation to withdrawal of the Notice and cancellation of the tenant's hearing. This did not occur and the landlord attended the hearing on instructions to proceed, without authority to reach a mutually settled agreement.

The matter of rent owed since July 2011, is not decided. I have based my decision on the failure of the tenant to dispute the Notice within 5 days of September 22 and his failure to pay rent within 5 days of September 22, 2011.

Therefore, the tenant's application is dismissed and the 10 Day Notice ending Tenancy for Unpaid Rent issued on September 21, 2011 is of full force and effect.

Conclusion

The tenant's application is dismissed.

The Notice ending tenancy issued on September 21, 2011, is of full force and effect.

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: October 28, 2011.

Residential Tenancy Branch