



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 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 4, 2011, the landlord did not appear. The tenant testified that the mail was sent to the address at which the landlord resided, provided a tracking number and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Landlord's absence.

The tenant gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice cancelled?

Background and Evidence

The tenant testified that the month to month tenancy started on August 1, 2011, monthly rent is \$650.00, which included hydro, and the tenant paid a security deposit of \$325.00 at the start of the tenancy.

The tenant stated she received a 10 Day Notice to End Tenancy for Unpaid Rent from the landlord on or about October 31, 2011, which did not list unpaid rent, but listed \$225.00 owed for unpaid utilities. The tenant submitted the Notice into evidence.

The tenant stated that she does is not obligated to pay for utilities under the tenancy agreement or any other agreement and therefore she does not owe utilities.

Furthermore, the landlord has never submitted a written request for payment of utilities.

Analysis

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

In the absence of the landlord, who did not appear at the hearing or submit evidence, the tenant's testimony will be the preferred evidence.

Section 46 (6) of the Act states that a landlord may serve a Notice to End Tenancy and treat unpaid utility charges as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I accept the tenant's testimony that she did not owe utilities at the time the Notice was issued and does not have unpaid utilities currently.

I therefore allow the tenant's Application for Dispute Resolution, and **I order that the 10 Day Notice to End Tenancy, dated October 31, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues until it may legally end.

Conclusion

The Tenant is granted an order cancelling the 10 Day Notice to End Tenancy, dated October 31, 2011.

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: November 24, 2011.

Residential Tenancy Branch