



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and the tenancy agreement.

The Tenant Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the building manager on December 15, 2011. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether there is a need for an Order requiring the Landlord to comply with the *Act*.

Background and Evidence

The Tenant stated that he has a tenancy agreement that requires him to pay monthly rent of \$600.00, \$100.00 of which is paid directly to the Landlord by Pacifica Housing.

The Tenant stated that on an unknown date the building manager advised Pacifica Housing that the Tenant was being evicted and, that as a result of that information, Pacifica Housing did not forward the \$100.00 rent payment to the Landlord in October and November. He stated that he was not evicted and that he paid the \$100.00 to the Landlord for October and November that was typically paid by Pacifica Housing. He stated that he was subsequently reimbursed for these payments by Pacifica Housing and he understood that Pacifica Housing was going to reinstate the \$100.00 payments in December.

The Tenant stated that he was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent; that he is not certain when he was served the Notice to End Tenancy, which was dated December 07, 2011; that the Notice stated that the Tenant owed rent of \$100.00 that was due on December 01, 2011; that he contacted Pacifica Housing which advised him they believed the rent had been paid but that if it had not been paid it will be paid prior to December 15, 2011; and that he assumes the rent has been paid

since the Landlord did not attend the hearing. He stated that nobody at Pacifica Housing could tell him when precisely the \$100.00 was paid for December.

The Tenant stated that the Landlord harasses him, in part, by repeatedly serving him with notices to end the tenancy for unpaid rent and he is seeking an Order to end this form of harassment.

Analysis

Section 46(4) of the *Act* stipulates that a Notice to End Tenancy served pursuant to this section has no effect if the rent is paid within five days after receiving the Notice to End Tenancy.

I find that I have insufficient evidence to conclude that the rent was not paid within five days of the Tenant receiving the Notice to End Tenancy. In reaching this conclusion I was influenced by the Tenant's testimony that he was told that the rent would be paid to the Landlord by Pacific housing prior to December 15, 2011; by the absence of any evidence from the Landlord to establish when the Notice to End Tenancy was actually served to the Landlord; and by the absence of any evidence from the Landlord to establish when, or if, they received the outstanding rent.

As I have insufficient evidence to conclude that the rent was not paid within five days after the Tenant received the Notice to End Tenancy, I find that I am unable to determine if the Notice was effective, pursuant to section 46(4) of the *Act*.

Conclusion

As I am unable to determine Notice is effective, pursuant to section 46(4) of the *Act*, I grant the Tenant's application to set aside the Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Landlord has the right to serve the Tenant with a Notice to End Tenancy for Unpaid Rent whenever the rent is not paid when it is due, even if that portion of the rent is being paid by a third party. I therefore decline to make an Order that limits the Landlord's right to serve a Notice to End Tenancy when the rent is not paid. The Tenant is strongly encouraged to communicate with Pacifica Housing to ensure that their portion of the rent is paid on time in the future.

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: December 29, 2011.

Residential Tenancy Branch