



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*; and to recover the filing fee from the landlord for the cost of this application.

During the hearing the tenant withdrew his application for an Order for the landlord to comply with the *Act*, and to recover the filing fee from the landlord.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, and was handed to the landlord's agent in person on December 28, 2011.

The tenant appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

The tenant testifies that this month to month tenancy started on August 01, 2011. Rent for this property is \$5,600.00 per month and is due on the first day of each month in advance.

The tenant testifies that the landlord's agent had asked for the hearing to be rescheduled from January 16, 2012. The tenant agreed and the hearing was scheduled to January 18, 2012.

The tenant testifies that the landlord served his 16 years old daughter with the 10 Day Notice to End Tenancy for unpaid rent. The tenant states as his daughter is a minor this is not the correct way to serve a Notice to End Tenancy.

Analysis

Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has not appeared at the hearing to provide any evidence concerning the amount of rent owed on the 10 Day Notice. When a Notice is served upon a tenant the burden of proof falls to the landlord to provide evidence that rent is owed and the amount of rent owed. As the landlord has not attended the hearing to provide oral testimony and the landlord has provided no documentary evidence to support the 10 Day Notice to End Tenancy for this hearing I am unable to uphold the 10 Day Notice to End Tenancy.

Consequently, the tenant's application is upheld and the 10 Day Notice dated December 21, 2011 is cancelled.

The landlord is at liberty to serve the tenant with a new 10 Day Notice for any outstanding rent. I caution the landlord to ensure any further Notices are served upon the tenant in accordance with s. 88 of the Act.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy dated December 21, 2011 is cancelled and the tenancy will continue.

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: January 18, 2012.

Residential Tenancy Branch