



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, CNR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property and to set aside a Notice to End Tenancy for Unpaid Rent. At the hearing the Tenant stated that she wishes to withdraw her application to set aside the Notice to End Tenancy for Landlord's Use of Property, as she intends to vacate the rental unit by February 29, 2012.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that she left copies of these documents at the Tenant's door approximately 3 or 4 days ago. The Tenant stated that she did not receive these documents from the Landlord. As the Tenant does not acknowledge receipt of these documents and they were not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, the documents are not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch. The Tenant stated that she mailed copies of these documents, via registered mail, to the Landlord on January 19, 2012. The Landlord stated that she only received the Tenant's Application for Dispute Resolution and Notice of Hearing in the mail, but that she received no other evidence from the Tenant. As the Landlord does not acknowledge receipt of evidence, the documents are not accepted as evidence for these proceedings.

The parties were advised that I would proceed with the hearing and would consider an adjournment if it became apparent that any of the evidence submitted by either party was crucial to making a determination in this matter.

Issue(s) to be Decided

The only issue to be decided is whether the Ten Day Notice to End tenancy should be set aside.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2009; that the Tenant is required to pay \$900.00 on the first day of each month; and that the Tenant is required to pay utilities.

The Landlord stated that on January 01, 2012 she attempted to cash a rent cheque for January; that the cheque was not honoured by the Tenant's financial institution; that on January 03, 2012 the Tenant gave her a different cheque for rent for January; that she deposited this cheque on January 03, 2012; that the bank mistakenly informed her that the second cheque did not clear the bank; that she has since learned that the second cheque did clear the bank; and that the Tenant does not currently owe rent for January of 2012.

The Tenant stated that she believes the second rent cheque for January has cleared her account and that she did not owe rent for January on January 13, 2012.

The Landlord and the Tenant agree that on January 13, 2012 the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which declared that the Tenant must vacate the rental unit by January 23, 2012. This Notice to End Tenancy declared that the Tenant owed \$900.00 in rent that was due on January 01, 2012.

The Landlord and the Tenant agree that the Ten Day Notice to End Tenancy also declared that the Tenant has failed to pay utilities of \$120.00 following a written demand for that payment, which was made on January 11, 2012.

Analysis

Section 46(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy. On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did serve the Tenant with a Notice to End Tenancy, pursuant to section 46 of the *Act*, on January 13, 2012.

On the basis of the Landlord's testimony at the hearing, I find that the Landlord mistakenly believed that the rent cheque the Landlord deposited on January 03, 2012 had not cleared the Tenant's financial institution; that the Landlord has since learned that the rent cheque the Landlord deposited on January 03, 2012 was honored by the Tenant's financial institution; and that the Tenant did not actually owe rent money on January 13, 2012. As the Tenant did not owe rent on January 13, 2012, I find that the

Landlord did not have grounds to serve the Tenant with a Notice to End Tenancy, served pursuant to section 46(1) of the *Act*, on January 13, 2012.

Section 46(6) of the *Act* stipulates that when a tenancy agreement requires a tenant to pay utility charges and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As the written demand for the payment of the utility charges, as outlined on the Ten Day Notice to End Tenancy, was not made until January 11, 2012, I find that the Landlord must wait until February 10, 2012 before the outstanding utility charges can be treated as unpaid rent. As not more than 30 days has passed since the Tenant was given a written demand to pay the utility charges, I find that the Landlord did not yet have grounds to serve the Tenant with a Notice to End Tenancy, served pursuant to section 46(6) of the *Act*.

Conclusion

As the Landlord has not established grounds to end the tenancy pursuant to section 46 of the *Act*, I grant the Tenant's application to set aside the Ten Day Notice to End Tenancy.

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: February 06, 2012.

Residential Tenancy Branch