



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The hearing dealt with the tenant's application under the Residential Tenancy Act (the "Act"), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The parties were in dispute resolution on March 16, 2012, on the landlord's application for dispute resolution, seeking an order of possession and monetary order due to unpaid rent.

The Decision of another Dispute Resolution Officer ("DRO") dated March 19, 2012, issued the landlord an order of possession, effective 2 days after service upon the tenant, and a monetary order for recovery of the filing fee. That Decision also granted the landlord leave to reapply for other monetary issues.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord submitted evidence that the tenant did not abide by the order of possession and has not yet moved out. The landlord also submitted evidence in which he requested a monetary order.

I heard undisputed testimony that the landlord served the tenant another 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on April 4, 2012, via personal delivery.

Therefore the tenant was deemed served on that day. The Notice was not submitted into evidence.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all the evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on April 4, 2012. I accept the evidence before me that the tenant failed to pay the rent owed in full or dispute the Notice within 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under section (46)(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the Notice is valid and enforceable due to the tenant's failure to dispute the Notice within the allowed 5 days.

Conclusion

The tenant's application for dispute resolution is dismissed as the Notice to End Tenancy issued is valid and may be enforced.

The landlord did not request an order of possession; however, the landlord has previously been issued an enforceable order of possession.

I do not find the landlord is entitled to a monetary order on the tenant's application seeking cancellation of a Notice; however the landlord remains at liberty to file his own application seeking a monetary order.

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: May 04, 2012.

Residential Tenancy Branch