



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, FF

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), dated May 14, 2012, and to recover the filing fee.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail to the address provided by the landlord, and in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided the tracking information for the registered mail sent to the landlord's postal box number as provided by the landlord, and that the tracking information indicates the landlord received and signed for the registered mail.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?
Should the Notice to End dated May 14, 2012 be set aside?

Background and Evidence

In this type of application, a burden of proof rests with the landlord to show the notice was issued for valid reasons; and, the tenant's burden is to show that the rent has been paid, or that the rent was withheld for emergency repairs authorized by the landlord, or withheld as per an Order issued by the Director. In this matter, the tenant provided evidence that the landlord issuing the Notice to End, on balance of probabilities, is no longer the *landlord* for this tenancy, as defined in the Act. The tenant disputes the Notice to End stating it is contrary to what they were told by the respondent for this matter in December 2011. The tenant testified that the respondent told them they had

lost the house to the bank and that the tenant no longer needed to pay rent. The tenant testified that on that basis, and on the basis the respondent no longer came to collect rent until issuing the tenant the 10 Day Notice; and, on the basis of the legal documentation received from the banks solicitors respecting possession of the rental unit, the tenant does not know if the respondent is currently the bona fide landlord or a person authorized by the lawful landlord to collect rent. The tenant testified that he thinks the respondent may simply be trying to “scam” money from them.

Analysis

The landlord did not appear in the hearing to defend their reasons for why they issued the Notice to End for Unpaid Rent, or to provide any evidence in this matter. I have not been provided with evidence that the Notice to End was issued by the landlord for the rental unit for valid reasons, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated May 14, 2012 is **cancelled and of no effect**, and therefore set aside. Effectively, the tenancy continues. As the tenant was successful in this matter the tenant is entitled to recover their filing fee of **\$50.00**.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside, and is of no effect**.

I grant the tenant a monetary Order for the filing fee in this matter in the amount of **\$50.00**. If the tenant serves the landlord with this Order and the landlord fails to comply with the Order, it may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on the parties.

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: June 12, 2012
