



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and to recover the cost of the filing fee for this application.

The landlord did not appear at the telephone conference call hearing.

The tenant appeared and gave affirmed testimony.

The tenant testified that the landlord was served with the Application for Dispute Resolution and Notice of Hearing (the "hearing package") by registered mail on July 13, 2012. The tenant supplied evidence of the tracking number of the registered mail.

I find the landlord was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his oral evidence and review his documentary evidence.

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 to End Tenancy and for recovery of the filing fee?

Background and Evidence

Although not submitted, the tenant testified that there was a written tenancy agreement, that the month to month tenancy started on August 1, 2010, monthly rent is \$2000.00, and the tenant paid a security deposit of \$1000.00 at the beginning of the tenancy.

The tenant stated the landlord served the Notice, dated June 5, 2012, via personal delivery. The Notice listed rent owed of \$2000.00 as of June 1, 2012.

The tenant stated he received a 2 Month Notice to End Tenancy for Landlord's Use of the Property in February 2012, requesting the tenant vacate the rental unit by April 30, 2012, for the landlord's use of the property.

Due to his father's death, the landlord agreed to extend the tenancy until June 30, 2012. The tenant stated that he paid rent in April and May. The tenant stated that he called the Residential Tenancy Branch ("RTB") for instructions and was told that due to having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property, he was entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Due to this, the tenant stated he did not pay rent for June, the last month of the tenancy. Despite this, the tenant stated that the landlord served him a 10 Day Notice to End Tenancy for Unpaid Rent for non-payment of rent for June.

The tenant stated that he and his family are packed and will be moved from the rental unit by June 30, 2012.

Analysis

Based on the foregoing affirmed testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlord, who did not appear or submit evidence, the tenant's evidence is preferred.

I find that the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of the Property pursuant to section 49 of the Act and was therefore entitled to receive compensation equivalent to 1 month's rent. Section 51 allows the tenant to withhold the

amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

I therefore find the tenant did not owe rent for June 2012, when he received the 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

I order that the 10 Day Notice to End Tenancy issued by the landlord, dated June 5, 2012, was invalid on the day it was issued, is cancelled and is of no force or effect.

As the tenant was successful in his application seeking cancellation of the Notice, I award the tenant recovery of the filing fee of \$50.00.

I award the tenant a monetary order in the amount of \$50.00, which is enclosed with the tenant's Decision. This order is a legally binding, final order, and may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this 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: June 29, 2012.

Residential Tenancy Branch