



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and to reduce the rent for repairs, services, or facilities agreed upon but not provided. The Tenant stated that he believes he has been overcharged for utilities during this tenancy and he is seeking a refund for those overpayments.

The Tenant was advised that his application for compensation for a utilities refund was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not provide sufficient particulars of this claim, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged overpayments. I find that proceeding with the Tenant's claim for compensation at this hearing would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims. The Tenant retains the right to file another Application for Dispute Resolution in which he claims compensation for overpaid utilities.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and several documents were sent to the Tenant via registered mail on June 25, 2012. The Tenant cited a Canada Post tracking number to corroborate this statement. I find these documents have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

In his written submission the Landlord requested an adjournment because he was on a cruise off the coast of Alaska at the time of the hearing. In this written submission the Landlord declared that he understood that the Tenant is claiming that he did not receive the Notice to End Tenancy that the Landlord served on June 16, 2012 until June 18, 2012 or June 19, 2012, and that the Tenant paid the rent on June 23, 2012. Given that this hearing is limited to the Tenant's application to set aside this Notice to End

Tenancy, I find that it is reasonable to proceed with the hearing today and to rely on the written submission of the Landlord as it pertains to the Notice to End Tenancy.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, should be set aside.

Background and Evidence

The Tenant stated that he is required to pay monthly rent of \$980.00 by the first day of each month and that he did not pay rent when it was due on June 01, 2012.

In his written submission the Landlord declared that he served a Ten Day Notice to End Tenancy for Unpaid Rent on June 16, 2012, a copy of which was submitted in evidence. The Notice declares that the Tenant has not paid rent of \$980.00 and it indicates that it was "posted" on the door. The Tenant stated that he located the Notice to End Tenancy on the door of his rental unit on June 18, 2012 or June 19, 2012.

In his written submission the Landlord declared that the Tenant paid the rent on July 23, 2012. The Tenant stated that that he paid the rent on July 23, 2012.

Analysis

On the basis of the undisputed evidence, I find that the Landlord posted a Ten Day Notice to End Tenancy on the Tenant's door on June 16, 2012 and that the Tenant located it on June 18, 2012 or June 19, 2012.

On the basis of the undisputed evidence, I find that the Tenant paid the rent for June on June 23, 2012.

Section 46(4) of the *Act* stipulates that a Ten Day Notice to End Tenancy has no effect if the Tenant pays the overdue rent within five days of receiving the Notice. As the Tenant paid the overdue rent within five days of receiving the Notice, I find that the Notice has no effect.

Conclusion

As the Notice to End Tenancy that was posted on the door on June 16, 2012 has no effect, I find that I do not need to consider the Tenant's application to set aside the Notice to End Tenancy. This tenancy continues until it is ended in accordance with the *Act*.

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: July 16, 2012.

Residential Tenancy Branch