



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, LRE

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End tenancy for Unpaid Rent; for a monetary Order; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an Order requiring the Landlord to return personal property belonging to the Tenant.

At the outset of the hearing the Advocate for the Tenant withdrew the application for a monetary Order; for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; and for an Order requiring the Landlord to return personal property belonging to the Tenant.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Tenant stated that he believes the Ten Day Notice to End Tenancy was served to the Landlord with the Application for Dispute Resolution that was served on July 13, 2012. The Agent for the Landlord stated that the Ten Day Notice to End Tenancy was not served to the Landlord with the Application for Dispute Resolution. In the absence of evidence that shows the Notice to End Tenancy was served as evidence for these proceedings, it was not accepted as evidence. During the hearing the parties consented to the content of relevant information on the Notice to End Tenancy.

Issue(s) to be Decided

The 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 the Tenant was required to pay rent of \$500.00 per month by the first day of each month.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on July 04, 2012. The Agent for the Tenant stated that he believes the Tenant located this Notice on his door on July 05, 2012 or July 06, 2012.

The Landlord and the Tenant agree that the Notice to End Tenancy declared that the tenant has failed to pay rent of \$500.00 that was due on June 28, 2012; that the tenant must vacate the rental unit by July 14, 2012; and that the Notice will be automatically cancelled if the landlord receives \$680.00 within five days after the Tenant received the Notice.

The Agent for the Landlord stated that when the Notice was served the Tenant had not paid rent of \$500.00 for July and he has not yet paid the rent for July. The Agent for the Tenant stated that he does not know if rent has been paid for July.

The Agent for the Landlord stated that the Tenant had only paid \$70.00 of the \$250.00 security deposit he was required to pay and that the Landlord added the \$180.00 owed for the security deposit to the demand for payment on the Notice to End Tenancy. The Agent for the Landlord argued that this amount should not have been included on the Notice to End Tenancy, as it was not unpaid rent.

Analysis

I find that the Notice to End Tenancy that was served to the Tenant was fatally flawed. It incorrectly declared that the Tenant had failed to pay rent of \$500.00 that was due on June 28, 2012, when in fact no rent was due on that date. As this Notice is demanding payment for rent that was not due on June 28, 2012, I find that it is of no force or effect.

Conclusion

I grant the application to set aside the 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: August 01, 2012.

Residential Tenancy Branch