



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP RP RPP O

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities, an order directing the landlord to make emergency repairs for health or safety reasons and to make repairs to the unit, site or property, to return the tenant's personal property and "other", although details of "other" were not included in the application for dispute resolution.

The tenant and the landlords attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties agreed that they received evidence from the other party and had the opportunity to review the evidence prior to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to re-apply

At the start of the hearing, the tenant requested to withdraw his claim regarding emergency repairs as the tenant confirmed that heat has been turned on in the rental unit. As a result, that portion of the tenant's application is dismissed with leave to re-apply.

Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

Background and Evidence

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) was submitted as evidence. The Notice is dated September 2, 2012 and provides an effective date of October 12, 2012, and indicates that unpaid rent in the amount of \$1,475.00 was due on October 1, 2012. A landlord testified that the notice was actually served on October 2, 2012 and that the date indicated on the Notice of September 2, 2012 was an error.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant’s request to cancel the Notice – The date of the Notice indicates September 2, 2012, and yet Notice is for unpaid rent for October 1, 2012. Therefore, **I find** the Notice is invalid as the Notice was dated before the rent was due. Pursuant to section 46 of the *Act*, **I cancel** the Notice as it has no effect. **I order** the tenancy to continue until ended in accordance with the *Act*.

Conclusion

I cancel the 10 Day Notice for Unpaid Rent and Utilities as the Notice is invalid.

I order the tenancy to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: October 24, 2012

Residential Tenancy Branch