



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 26, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

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

.Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated January 26, 2013.

The landlord testified that the tenant fell into arrears with the rent and had accrued a debt of \$1,400.00, including \$700.00 for December 2012 and \$700.00 for January 2013, plus utilities. The landlord testified that a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served in person on the tenant on January 26, 2013. According to the landlord, some of the rental arrears were paid after the Notice was served and the landlord accepted these funds. The landlord pointed out that the tenant did not pay all of the arrears.

I asked the landlord if he made it clear to the tenant, at the time the arrears were paid, that the funds were only being accepted for use and occupancy and would not function to reinstate the tenancy. The landlord admitted that the issue of reinstating the tenancy

issue was not discussed with the tenant, nor was a receipt issued with the proviso, "*For Use and Occupancy Only*".

The tenant testified that the \$700.00 arrears owed for December 2012 has been paid and that additional funds in the amount of \$700.00 were paid to the landlord to cover the rent for February 2013. The tenant acknowledged that he did not pay all of the arrears accrued within five days and agreed that he is still in arrears for \$700.00 plus utilities. The tenant stated that he is "working with the landlord" to bring his rental account up to date.

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

If the tenant fails to pay the rent when it is section 46 of the Act permits a landlord to issue a 10-Day Notice to End Tenancy for Unpaid Rent to terminate the tenancy. However, section 46(4) states that if a tenant pays the arrears within 5 days of receiving the Notice to end Tenancy for Unpaid Rent the Notice is cancelled.

In this instance, I find that the tenant did not pay the rent within five days. However, I do accept that the tenant made partial payments which were accepted by the landlord.

I find that the landlord did not issue a receipt or make a statement to the tenant to clarify that the funds paid towards the arrears were being accepted for use and occupancy only and did not function to reinstate the tenancy. I find that the landlord's acceptance of the partial payment for rent, without first making this condition clear, constitutes a reinstatement of the tenancy relationship. Therefore I find that the Ten Day Notice for Unpaid Rent must be cancelled. I make no findings with respect to what exact amount of rental arrears or utilities are currently owed by the tenant to the landlord.

Based on the testimony and evidence discussed above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated January 26, 2013 is cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and is granted an order cancelling the landlord's 10-Day Notice to End Tenancy for Unpaid Rent dated January 26, 2013.

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: February 21, 2013

Residential Tenancy Branch

