



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMC PROPERTY SERVICES
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent.

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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

Preliminary Issue 1: Amending the Tenant's Application

The tenant's application indicated that they were seeking to cancel a One Month Notice to End Tenancy for Cause.

At the outset of the hearing the parties testified that the landlord had never served the tenant with a One Month Notice to End Tenancy for Cause. The parties testified that the landlord had served the tenant with a 10-Day Notice to End Tenancy for Unpaid Rent.

Accordingly, the application was amended to deal with the tenant's request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent.

The amendment to the Tenant's application was allowed because the alternative for the tenant would have been to file a second application to dispute the 10-Day Notice after the 5-day deadline.

Accordingly the tenant's request to cancel a non-existent One Month Notice to End Tenancy for Cause was changed to a request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent.

Preliminary Issue 2: Date of Notice

Submitted into evidence was a copy of the Notice served on the tenant. However, the landlord was claiming arrears for the month of August 2013, but the form was issued on August 1, 2013, prior to the funds being in arrears.

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 the Act, the regulations or the tenancy agreement.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

In this instance I find that the tenant was not in arrears for rent at the time the Notice was served on August 1, 2013. Because the 10-Day Notice to End Tenancy for Unpaid Rent was issued prior to the rent being considered in arrears, I find that the tenant was never served with a valid and enforceable 10-Day Notice to End Tenancy for Unpaid Rent.

Given the above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated August 1, 2013 is cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled as it was issued and served prior to the tenant being in arrears.

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: September 04, 2013

Residential Tenancy Branch

