



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the tenant; the landlord and her agent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act* (Act).

Background and Evidence

The parties agree the tenancy began on July 26, 2013 as a month to month tenancy for the monthly rent of \$680.00 due on the 1st of each month with a security deposit of \$340.00 paid.

The tenant has submitted into evidence the following documents:

- A typewritten letter dated September 9, 2013 from the landlord to the tenant stating that tenant must get rid of her dog and that the landlord seeks a pet damage deposit in the amount of \$340.00 immediately. The letter goes on to say that a 10 Day Notice to End Tenancy for Unpaid Rent is included with the letter "in case you do not pay the pet damage."; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on September 9, 2013 with an effective vacancy date of September 18, 2013 citing the tenant has failed to pay rent in the amount of \$340.00 that was due on September 1, 2013.

The landlord testified that the tenant obtained a dog despite being told she could not have one. The landlord submits she found out about the dog in mid August 2013 and

that she verbally requested a pet damage deposit in the amount of \$340.00 to be paid. She went on to say that the tenant had not paid the deposit and as of September 9, 2013 she wrote the above noted letter to the tenant and Notice.

The landlord submits that because the tenant did not pay the pet damage deposit the landlord "took" it out of the rent that had been paid for the month of September 2013 and then issued the 10 Day Notice, because it meant that the tenant had not paid the full rent for the month of September.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Rent is defined in Section 1 of the *Act* as money paid or agreed to be paid by a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services and facilities but does not include a security deposit or pet damage deposit.

As such, I find there was no rent owing to the landlord at the time the landlord issued to the 10 Day Notice to End Tenancy for Unpaid Rent and the notice issued, therefore, does not comply with Section 46.

However, I caution the tenant that as the landlord has requested the payment of a pet damage deposit she may be entitled to end the tenancy under Section 47 of the *Act* if the landlord issues a 1 Month Notice to End Tenancy for Cause for failing to pay a pet damage deposit within 30 days of being requested to do so.

Conclusion

Based on the above, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on September 9, 2013 and find the tenancy remains in full force and effect.

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: October 24, 2013

Residential Tenancy Branch

