



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order that the landlord make repairs to the unit, site or property.

The tenant and the landlord both attended the hearing and gave affirmed testimony. The tenant provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed to settle a portion of this application on the following conditions:

1. The landlord will have all windows in the rental unit repaired by May 15, 2014;
2. The landlord will have the furnace repaired by May 15, 2014;
3. The landlord will attend the rental unit on April 25, 2014 at 10:00 a.m. to examine the tenant's complaint of mold to determine what action to take.

The parties did not agree to an order with respect to the tenant's application for an order cancelling the notice to end tenancy.

Issue(s) to be Decided

The only issue remaining to be decided is:

- Should a notice to end tenancy for unpaid rent or utilities be cancelled?

Background and Evidence

The landlord testified that this tenancy began as a fixed term tenancy in November, 2004 and has since reverted to a month-to-month tenancy. Rent in the amount of \$591.98 is currently payable in advance on the 1st day of each month. A written tenancy agreement was signed by the parties, although a copy has not been provided for this hearing. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00 which is still held in trust by the landlord.

The landlord further testified that rent is usually mailed by the tenant to the landlord and is repeatedly late. The parties do not live in the same community. The tenant failed to pay rent when it was due for the month of March, 2014 and on March 2, 2014 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on that date. A copy of the notice has been provided by the tenant and it is dated March 2, 2014 and contains an expected date of vacancy of March 11, 2014. The notice also states that the tenant failed to pay rent in the amount of \$591.98 that was due on March 1, 2014, and both pages of the 2-page form have been provided.

The tenant paid the rent for March, and the landlord does not recall when it was received but testified that it was received on March 9 or 10, 2014.

The tenant testified that she relies on government funding, which has not been regular and lost her mother last year requiring the tenant to travel and deal with her late mother's estate. There are currently no arrears.

Analysis

Firstly, the *Residential Tenancy Act* states that documents served on a party by posting to the door or other conspicuous place are deemed to be served 3 days later. In this case, the landlord testified that the notice to end tenancy was served in that manner on March 2, 2014 and I find that it was deemed to be served 3 days after that, or March 5, 2014.

The *Act* also states that if rent is not paid when it is due under the tenancy agreement, the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, in the approved form, and I find that the landlord has done that. The *Act* further states:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

In this case, the landlord was unable to provide any testimony of when the rent was paid other than to guess that it was on March 9 or 10, 2014. Having found that the tenant received the notice on March 5, 2014, and if the rent was paid on the 9th or 10th of March, I find that the tenant paid the rent within the 5 days as set out in Section 46, and the notice therefore has no effect. I hereby cancel the notice to end tenancy and the tenancy continues.

Conclusion

For the reasons set out above, the notice to end tenancy issued on March 2, 2014 is hereby cancelled and the tenancy continues.

I hereby order, by consent that:

- 1) The landlord will have all windows in the rental unit repaired by May 15, 2014;
- 2) The landlord will have the furnace repaired by May 15, 2014;
- 3) The landlord will attend the rental unit on April 25, 2014 at 10:00 a.m. to examine the tenant's complaint of mold to determine what action to take.

This order is final and binding and may be enforced.

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: April 17, 2014

Residential Tenancy Branch

