



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with a tenant's application, as amended, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Although the tenant's Application indicated that a 1 Month Notice to end Tenancy for Cause was under dispute, both parties agreed that no such Notice had been issued and that the Notice to End Tenancy issued to the tenant was a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant's application was amended to reflect the correct dispute code that corresponds to a 10 Day Notice to End Tenancy for Unpaid Rent.

At the outset of the hearing, the landlord stated the 10 Day Notice was nullified by way of payment of the outstanding that was received by the landlord on May 6, 2014.

The tenant's advocate requested that the tenant be awarded recovery of the filing fee on the basis the landlord should not have issued the 10 Day Notice in the first place. The landlord objected to this request as the tenant had not indicated on his Application for Dispute Resolution that he was seeking recovery of the filing fee. I allowed the parties to make submissions to me with respect to issuance of the 10 Day Notice and payment of rent for May 2014 as section 72 provides me the discretion to make an award for recovery of the filing fee.

Issue(s) to be Decided

Is the tenant awarded recovery of the filing fee?

Background and Evidence

The 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) that was the subject of this hearing is dated May 3, 2014 and the tenant had indicated on his Application for Dispute Resolution that he received the Notice on May 3, 2014.

The landlord testified the landlord received payment of the rent on May 6, 2014 and argued that the landlord was within its right to issue a 10 Day Notice on May 3, 2014 since payment had not been received by that date.

The tenant stated that he mailed a rent cheque to the landlord but could not recall when he mailed the rent cheque for May 2014.

The tenant's advocate explained that mail to and from the residential property can be slow given its remote location so the Application was filed as a cautionary measure. The advocate also suggested that the landlord would not accept post-dated cheques from the tenant.

The landlord confirmed that post-dated cheques are acceptable.

Analysis

The Act provides that a tenant is required to pay rent when due under the terms of their tenancy agreement. As such, it is the tenant's responsibility to deliver the rent to the landlord by the due date. As the tenant could offer no evidence as to when he sent his May 2014 rent to the landlord and the landlord testified that it was received on May 6, 2014, I reject the tenant's position that the 10 Day Notice should not have been issued on May 3, 2014 and I make no award for recovery of the filing fee.

Conclusion

The 10 Day Notice dated May 3, 2014 was nullified due to payment of the outstanding rent within five days of the tenant receiving the 10 Day Notice.

I made no award for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: June 25, 2014

Residential Tenancy Branch

