



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LAT, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), pursuant to section 46;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant did not attend this hearing, although I waited until 9:49 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he received the tenant's application for dispute resolution package ("Application") on November 5 or 6, 2014, when it was served upon him personally by the tenant at the rental unit property where he lives.

The landlord testified that he attempted to personally serve the tenant with a 10 Day Notice, dated November 1, 2014, on the same date, but she refused to accept service. The landlord testified that he then posted the 10 Day Notice on the tenant's rental unit door on November 1, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 4, 2014, the third day after its posting.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2014. It is a month-to-month tenancy. Monthly rent is payable in the amount of \$625.00 due on the first day of each month. A security deposit of \$312.50 was paid by the tenant on October 3, 2014. The tenant continues to occupy the rental unit. The landlord states that November 2014 rent in the amount of \$625.00 has not been paid by the tenant, to date.

Analysis

In accordance with subsection 46(4)(b) of the *Act*, the tenant must file her application for dispute resolution within five days of receiving the 10 Day Notice. The tenant is deemed to have received the 10 Day Notice on November 4, 2014. The tenant filed her application for dispute resolution on November 5, 2014. Accordingly, the tenant filed within the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord testified that his 10 Day Notice was invalid because it was served on November 1, 2014. Section 46(1) of the *Act* states that "a landlord may end a tenancy if rent is unpaid on any day **after the day it is due...**" (emphasis added). The landlord served the 10 Day Notice on November 1, 2014 and rent is due on November 1, 2014. Therefore, the earliest that the landlord could have served the 10 Day Notice would have been November 2, 2014. Accordingly, I advised the landlord at the hearing that his 10 Day Notice, dated November 1, 2014, is cancelled and is of no force and effect. I advised the landlord that this tenancy will continue until ended in accordance with the *Act*.

The landlord testified that he served the tenant with another 10 Day Notice, dated November 6, 2014, and that the matter is set for a hearing before the Residential Tenancy Branch on December 17, 2014. I advised the landlord that an application relating to this second 10 Day Notice is not before me and will need to be dealt with at the future hearing, where the tenant would be aware of the landlord's intentions regarding that second 10 Day Notice.

Where a tenant applies for an authorization to change the locks to the rental unit, an order to the landlord to make emergency repairs for health or safety reasons, and an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, the onus is on the tenant to prove, on a balance of probabilities, the grounds on which the above claims are based. The tenant did not submit any evidence or appear at this hearing. The tenant did not meet her onus of proof. Accordingly, I advised the landlord at the hearing that I was dismissing the above-noted claims, without leave to reapply.

Conclusion

The landlord's 10 Day Notice, dated November 1, 2014, is cancelled and is of no force and effect. This tenancy continues.

The tenant's application for an authorization to change the locks to the rental unit, an order to the landlord to make emergency repairs for health or safety reasons, and an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, are all dismissed without leave to reapply.

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: November 28, 2014

Residential Tenancy Branch

