



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

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

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent, pursuant to section 46.

The landlord did not attend this hearing, although I waited until 9:51 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave sworn testimony that he received a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 27, 2014, for unpaid September 2014 rent ("First 10 Day Notice") and a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 27, 2014, for unpaid October 2014 rent ("Second 10 Day Notice"), from the landlord, when it was posted to the tenant's door where he was residing in the rental unit. The tenant could not recall the exact date he received both notices but testified that it was a few days after October 27, 2014. The landlord was not present to confirm the date that he posted both notices. However, the landlord indicated on both notices that they were posted on the door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with both 10 Day Notices on October 30, 2014, the third day after the earliest time they could be posted, which was the date of both notices, October 27, 2014.

The tenant testified that he served the landlord with the Application for Dispute Resolution hearing package ("Application") on November 6, 2014 by handing it personally to the landlord's agent, GB, who is the on-site program manager. Section 89(1)(b) permits the tenant to leave a copy of the Application with the landlord's agent.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the Application on November 6, 2014.

Issue(s) to be Decided

Should both the landlord's 10 Day Notices be cancelled?

Background and Evidence

The tenant testified that this tenancy began on March 24, 2014 and he continues to reside in the rental unit. The tenancy is a month-to-month tenancy. Monthly rent is payable in the current amount of \$375.00 on the first day of each month. A security deposit in the amount of \$187.50 was paid by the Ministry of Social Development ("Ministry"), on behalf of the tenant.

The landlord issued two 10 Day Notices, stating that rent in the amount of \$375.00 was unpaid for each of September and October 2014.

The tenant gave undisputed sworn testimony that the Ministry pays rent on his behalf to the landlord directly, via cheque every month. The tenant testified that he made inquiries of the Ministry and determined that cheques for both September and October were sent to the landlord.

The tenant further testified that the landlord advised him on October 31, 2014 that the landlord would not be pursuing an order of possession against him because it was in discussions to resolve the issue. However, the tenant wished to proceed with his application to cancel both 10 Day Notices because he was unsure of the landlord's intentions.

Analysis

In accordance with subsection 47(4) of the *Act*, the tenant must file his application for dispute resolution within five days of receiving both 10 Day Notices. In this case, the tenant is deemed to have received both 10 Day Notices on October 30, 2014. The tenant filed his application for dispute resolution on November 4, 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 did not submit any evidence or appear at this hearing. The landlord did not

meet its onus of proof. Accordingly, I advised the tenant at the hearing that both the First and Second 10 Day Notices are set aside and are of no force and effect. This tenancy will continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel both 10 Day Notices. Both 10 Day Notices are set aside and are of no force or effect. This tenancy continues.

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 27, 2014

Residential Tenancy Branch

