



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on November 11, 2014 in accordance with Section 89. The tenant also testified he served the landlord with his amended Application for Dispute Resolution personally on November 13, 2014.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

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; to a monetary order for money owed, pursuant to Sections 46, 49, 51, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted the tenancy began in August 2007 for a current monthly rent of \$440.00 due on the 1st of each month with a security deposit of \$220.00 paid.

The tenant submitted into evidence the following documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on September 25, 2014 with an effective vacancy date of November 30, 2014 with no reason given on the 2nd page of the Notice;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 8, 2014 with an effective vacancy date of November 21, 2014 due to unpaid rent in the amount of \$440.00.

The tenant submits that the 2 Month Notice to End Tenancy for Landlord's Use of Property was cancelled in a previous hearing under a separate file as it did not disclose any reason for ending the tenancy.

The tenant has also submitted a copy of a cheque for the payment of rent dated November 12, 2014.

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.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the tenant's undisputed testimony and evidence I find the tenant paid the rent noted in the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 8, 2014 within 5 days of receipt of the Notice and as such the notice has no force or effect.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

While I accept that the tenant received a notice to end tenancy under Section 49 of the *Act*, I find that since the tenant disputed the Notice and was successful in his previous Application seeking to cancel the Notice that notice was also of no effect and the tenant did not act on the notice by vacating the rental unit.

While Section 51 does indicate that a tenant who receives a notice to end tenancy under Section 49 is entitled to compensation I find that the intention of the compensation is intended to assist the tenant with the costs associated with moving when a landlord wants to end the tenancy for their own personal use.

As the Notice was found to be ineffective and not enforceable and the tenant did not move out of the rental unit based on the Notice I find he is not entitled to any of the compensation intended to assist him with moving costs.

Conclusion

Based on the above, I order that the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on November 8, 2014 is cancelled.

I dismiss the tenant's claim for money owed as compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property.

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: December 10, 2014

Residential Tenancy Branch

