



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR and O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and "other".

The Tenant stated that on December 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents he submitted to the Residential Tenancy Branch on December 29, 2014 were served to the Landlord by registered mail. The Landlord acknowledged receipt of these documents, with the exception of the Ten Day Notice to End Tenancy for Unpaid Rent, dated December 23, 2014. The documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

On January 05, 2015 the Tenant submitted a USB stick to the Residential Tenancy Branch, which he stated contain photographs of the rental unit. He stated that this evidence was served to the Landlord by mail, although he cannot recall the date of service. The Landlord stated that he did not receive this evidence. As the Landlord did not acknowledge receipt of the USB stick, it was not accepted as evidence for these proceedings.

On January 08, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which are dated January 02, 2015 and January 08, 2015. He stated that these documents were sent to the Landlord, via registered mail, on December 30, 2014. When he was advised that it was unlikely he sent documents that are dated January 02, 2015 and January 08, 2015 to the Landlord in December, he stated he did not know when they were sent. The Landlord stated that he did not receive this evidence. As the Landlord did not acknowledge receipt of these documents, they were not accepted as evidence for these proceedings.

On January 15, 2014 the Tenant submitted documents to the Residential Tenancy Branch. He stated that this evidence was mailed to the Landlord, via regular mail, on an unknown date. The Landlord stated that he did not receive this evidence. As the

Landlord did not acknowledge receipt of these documents they were not accepted as evidence for these proceedings.

Residential Tenancy Branch Rules of Procedure permit me to adjourn a hearing to provide a party to serve, or re-serve, evidence to another party. I opted not to adjourn this hearing for the purposes of allowing the Tenant to re-serve the evidence the Landlord did not acknowledge receiving, as I am satisfied that the documents submitted by the Tenant will have little probative value.

The Landlord submitted no documentary evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree they entered into a tenancy agreement that required the Tenant to pay monthly rent of \$550.00 by the first day of each month.

The Landlord and the Tenant agree that on December 11, 2014 the Tenant paid \$300.00 of the rent that was due on December 01, 2014 and that the remainder of rent for December has not been paid. The Tenant stated that he did not pay the rent because he believes there are deficiencies with the rental unit which the Landlord has not repaired. He stated that the Residential Tenancy Branch has not given him authority to withhold any portion of his rent for December.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy, dated December 02, 2014, was personally served to the Tenant by the building manager on December 02, 2014. The parties agree that this Notice declared that the Tenant must vacate the rental unit by December 12, 2014 because the Tenant had not paid rent of \$550.00 that was due on December 01, 2014.

The Tenant filed an Application for Dispute Resolution seeking to dispute the Notice on December 29, 2014.

At the end of the hearing the Landlord indicated that he wants rent that has not been paid, however he did not request an Order of Possession.

Analysis

On the basis of the undisputed evidence, I find that by December 02, 2014 the Tenant had not paid the \$550.00 in rent that was due on December 01, 2014; that the Tenant

paid \$300.00 of that rent on December 11, 2014; and that \$250.00 in rent for December is still outstanding.

Section 26(1) of the Residential Tenancy Act (Act) stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant has the right to deduct any portion of the rent.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due, by serving a Ten Day Notice to End Tenancy for Unpaid Rent. On the basis of the undisputed evidence, I find that an agent for the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on December 02, 2014.

As the Tenant did not pay rent when it was due on December 01, 2014; the Tenant has been served with a Ten Day Notice to End Tenancy for Unpaid Rent; and the Tenant has still not paid all the rent due for December, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Conclusion

As I have dismissed the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Tenant is obligated to vacate the rental unit in accordance with the Notice to End Tenancy.

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: January 21, 2015

Residential Tenancy Branch

