



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 12, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on December 1, 2013 as a month to month tenancy. Rent is \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on December 10, 2013.

The Landlord said he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 1, 2014. He served the Notice on December 1, 2014 by personal delivery to the Tenants. The Effective Vacancy date on the Notice was December 10, 2014. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenants’ application is unsuccessful.

The Landlord continued to say that the Tenants have paid the unpaid rent for December, 2014 in two payments. The Tenant included a signed rent receipt from the Landlord for \$600.00 on December 1, 2014 and for \$300.00 on December 11, 2014. The rent receipt says “Rent Paid by Cash”.

The Landlord continued to say that the Tenants have not paid the January, 2015 rent of \$900.00 and the Landlord said he has issued another 10 Day Notice to End Tenancy for Unpaid Rent dated January 1, 2015.

The Tenant said they were late paying the December, 2014 rent because his EI benefits were late coming to him. Further the Tenant said he is waiting for EI medical benefits to be paid to him so that he can pay the January, 2015 rent. The Tenant said the benefits are being processed but he has not received the money as of yet.

The Tenant said inclosing that they are sorry for the trouble and they understand the Landlord's position and they will pay the rent as soon as they are able.

The Landlord said in closing that he wants to end the tenancy and requested an Order of Possession if the Tenants application is not successful. As well the Landlord requested the Tenants not to smoke in the unit as it is bothering other tenants in the building.

Analysis

The Tenants have applied to cancel the December 1, 2014, 10 Day Notice to End Tenancy for Unpaid rent. Both parties agreed that the December, 2014 rent has been paid and the Landlord issued a receipt for the rent payment on December 11, 2014. Consequently the 10 Day Notice to End Tenancy for unpaid rent dated December 1, 2014 has been satisfied. Pursuant to Policy Guideline # 11 the Landlord has issued a receipt for the December, 2014 rent with no indication on the receipt that the money has been accepted for use and occupancy only, therefore it is deemed that by accepting the rent and issuing a receipt without conditions on it, that the Landlord has re-instated the tenancy. Consequently the 10 Day Notice to End Tenancy for unpaid rent has been satisfied and the tenancy is deemed to be continuing as agreed in the tenancy arrangement. As a result the Landlord's request for an Order of Possession is dismissed.

Further the Landlord is at leave to apply for an Order of Possession if the January, 2015 rent is not paid on time, which it has not been paid on time. The Landlord must comply with the Notice to End Tenancy information. It should be noted that on page 2 of the 10 Day Notice to End Tenancy for Unpaid Rent it says the Notice can be served any day **after** the rent is due. Consequently as the rent is due on the first (1st) day of the month the earliest day a 10 Day Notice to End Tenancy for Unpaid Rent can be issued is on the second (2nd) day of the month to make it a valid Notice to End Tenancy.

In this situation the Landlord's January 1, 2015 10 Day Notice to End Tenancy for unpaid rent may not be a valid Notice to End Tenancy. The Landlord can issue a new Notice to End Tenancy if he wishes to.

Conclusion

As the 10 Day Notice to End Tenancy dated December 1, 2014 has been satisfied the Notice is not in effect and does not need to be cancelled. I order the tenancy to continue as agreed to in the tenancy arrangement.

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 14, 2015

Residential Tenancy Branch

