



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside. The tenant provided evidence by way of registered mail tracking number that the landlord had been served with all documentary evidence for this hearing in accordance with the Act. I am satisfied that the landlord was duly served. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to have the notice set aside?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about February 1, 2013. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$800.00. The tenant failed to pay rent in the month(s) of February 2015 and on February 4, 2015 the landlord served the tenant with a notice to end tenancy. The landlord stated that he is frustrated with the tenant always paying his rent late.

The tenant gave the following testimony:

The tenant stated that he transferred the funds to the landlords account as instructed on February 2, 2015. The tenant stated that the landlord served him the notice two days after he had already paid the rent and is frustrated by the landlords' actions.

Analysis

The tenant provided documentary evidence that he had in fact transferred the funds as stated. The landlord initially gave testimony that the tenant didn't pay the rent but then later changed his testimony and stated that he had in fact paid the February rent. Based on the documentary evidence and the acknowledgement of the landlord I hereby set aside the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 4, 2015, it is of no effect or force. The tenancy continues.

The landlord became extremely agitated during the hearing when the tenant requested the recovery of the filing fee. The landlord stated that he is being penalized for serving a notice and that he will be asking for a review of my decision regardless of what it is. The landlord stated that he wasn't aware that the tenant had paid the rent and that he issued the notice assuming no payment was made. The landlord stated "the bank must have back dated the deposit".

The landlord wanted to address the tenants repeatedly late rent payments. I explained to the landlord numerous times during the hearing the options that were available to him and that he was at liberty to file an application and seek dispute resolution if he and the tenant could not resolve their issues. The landlord became more and more agitated with me each time I explained that I would not address this issue. The landlord repeatedly stated "the rent is due on the first". I find that the landlord issued the notice unnecessarily as the tenant had already made payment and that the tenant was required to file for dispute resolution. I find that the tenant has been successful in his application and is entitled to the recovery of the \$50.00 filing fee.

The tenant is entitled to a one time reduction of \$50.00 from the rent due for the month of April 2015.

Conclusion

The tenancy continues. The notice is set aside.

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: March 04, 2015

Residential Tenancy Branch

