



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHEENASAY HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order cancelling the 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person by handing the hearing documents to an agent of the landlords on June 10, 2015.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?

Background and Evidence

The tenant testified that this month to month tenancy started in the spring of 2013. Rent for this unit is \$740.00 per month and is due on the 1st of each month in advance.

The tenant testified that he had fallen behind with his rent in September, 2014. The landlord applied for a Direct Request Proceeding and was issued with an Order of Possession. The landlord did not serve this upon the tenant as they made an arrangement for the tenant to pay back the rent arrears. The tenant testified that he again fell behind with his rent in October, 2014; however, all the rent arrears were paid by February 12, 2015 including rent for January and February, 2015.

The tenant testified that he paid rent for March, April and May, 2015 but was unable to pay all his rent for June on June 01, 2015. The landlord served the tenant with another 10 Day Notice to End Tenancy. The tenant testified that this was pushed under the tenant's door on June 02, 2015 and was received by the tenant on that date. The tenant testified that he paid \$200.00 on June 03, 2015 and the balance of \$565.00, which including a \$25.00 late fee, was paid on June 07, 2015.

The tenant testified that the landlord had stated on the 10 Day Notice that the outstanding rent was \$1,615.00. The tenant testified he has attempted to ask the landlord how he has arrived at that figure as the tenant's records and rent receipts show that only \$740.00 was owed on June 01, 2015.

The tenant testified that as the outstanding rent of \$740.00 was paid within five days of receiving the 10 Day Notice this means that the Notice has no effect and should be cancelled.

Analysis

In the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me. I refer the parties to s. 46(4) of the *Act* which states:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

I am satisfied from the undisputed evidence before me that the amount of rent shown as owed on the 10 Day Notice is in error. The tenant has provided documentation to show rent payments made in 2014 and 2015 including rent receipts from the landlord. I therefore find as of June 01, 2015 the tenant owed rent of \$740.00 not \$1,615.00 as stated on the Notice. I further find the amount of \$740.00 was paid to the landlord within five days of the tenant being deemed served the Notice. Consequently, in accordance with s. 46(4)(a) of the *Act* the Notice has no effect and is hereby cancelled.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated, June 02, 2015 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and payable to the landlord on September 01, 2015.

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: August 05, 2015

Residential Tenancy Branch