



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WING LEE HOLDINGS LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

The tenant, a legal advocate for the tenant, and an agent for the landlord (the "agent") attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. The parties were also provided the opportunity to ask questions about the hearing process.

Both parties confirmed having received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. I find the parties were sufficiently served in accordance with the *Act*.

Issue to be Decided

- Should the 10 Day Notice dated June 15, 2015 be cancelled?

Background and Evidence

A month to month tenancy agreement began on June 1, 2014. Monthly rent of \$650 was due on the first day of each month, and was increased to \$660 per month as of June 1, 2015. A copy of the tenancy agreement was submitted in evidence.

The parties agreed that a 10 Day Notice dated June 15, 2015 was served on the tenant on June 15, 2015 via personal service. The tenant applied to dispute the 10 Day Notice on June 16, 2015. On the 10 Day Notice, it indicates that \$75 in unpaid rent was owed as of June 1, 2015. The effective vacancy date listed on the 10 Day Notice was June 25, 2015.

The agent testified that the amount of \$75 was not unpaid rent, but was “damage arrears” dating back to November 7, 2014 for a door that the agent claimed was kicked in by police. The agent stated that there was no place on the 10 Day Notice to write damage arrears so the amount of \$75 was listed as unpaid rent.

The tenant submitted in evidence that the 10 Day Notice is invalid due to the \$75 amount not being related to unpaid rent or utilities.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving 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(6) of the *Act* provides for unpaid utilities if the tenancy agreement requires the tenant to pay utilities and the utilities remain unpaid for 30 days after a written demand to pay the unpaid utilities.

In the matter before me, the agent confirmed that the \$75 amount listed on the 10 Day Notice was not related to unpaid rent or utilities, and was actually “damage arrears”. Section 46 of the *Act* does not provide for a 10 Day Notice to be used for damages and is invalid as a result. Therefore, **I cancel** the 10 Day Notice dated June 15, 2015 as the 10 Day Notice is an invalid notice under the *Act* **and is of no force or effect** given that the 10 Day Notice was not related to unpaid rent or utilities.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

I make no finding on alleged damages as there was no application before me for damages to the rental unit.

Conclusion

The 10 Day Notice dated June 15, 2015 issued by the landlord has been cancelled and is of no force or effect. The tenancy has been ordered to continue until ended in accordance with the *Act*.

I caution the landlord from issuing further 10 Day Notices for damages as a 10 Day Notice is for unpaid rent or unpaid utilities only. Should the landlord continue to issue 10

Day Notices for damages, the tenant is at liberty to apply for compensation under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2015

Residential Tenancy Branch

