



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened in response to an application made December 8, 2015 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an order cancelling a notice to end tenancy pursuant to Section 46 of the Act.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person on December 10, 2015 in accordance with Section 89 of the Act. The Landlord did not attend the hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The tenancy started in 2014. Rent of \$800.00 is payable monthly. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit.

On December 4, 2015 the Tenants were given a 10 day notice to end tenancy for unpaid rent. The Tenants paid all rents including January 2016 rent, have no arrears and believe according to their calculations that they have overpaid the rent by \$100.00.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant a notice to end tenancy. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice. Based on the undisputed evidence of the Tenants I find that the Landlord has not shown that the rent is or was unpaid. I find therefore that the Notice is not valid and that the Tenants are entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and the tenancy continues.

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 20, 2016

Residential Tenancy Branch

