



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT, OLC, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Unpaid Rent, for more time to apply to cancel a Notice to End Tenancy, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 12, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlords, via registered mail, at the service address noted on the Application. The Tenant cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however the Landlords did not appear at the hearing.

The Tenant stated that he submitted no evidence to the Residential Tenancy Branch until April 19, 2016. He was advised that I do not have that evidence; that it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and that I was not, therefore, accepting those documents as evidence for these proceedings.

Issue(s) to be Decided

Is there a need to set aside a Ten Day Notice to End Tenancy for Unpaid Rent?
Is there a need to issue an Order requiring the Landlord to comply with the *Act*?
Is there a need to grant the Tenant more time to apply to cancel a Notice to End Tenancy?

Background and Evidence

The Tenant stated that:

- this tenancy began on October 04, 2015;
- he agreed to pay monthly rent of \$1,900.00 by the first day of each month;

- he had provided the Landlord with post-dated cheques, including a post-dated cheque for March 01, 2016;
- on March 01, 2016 one of the Landlords sent him an email in which the Landlord told him his rent was overdue and that he must move out in ten days to “avoid legal action”;
- that the Landlords have not served him with a Ten Day Notice to End Tenancy for Unpaid Rent that was generated by the Residential Tenancy Branch;
- that his application to cancel a Notice to End Tenancy was simply an attempt to confirm that he was not required to move out of the rental unit on the basis of the email that was sent to him on March 01, 2016;
- the Landlords have not served him with a Notice to End Tenancy since sending the email on March 01, 2016; and
- the Landlords have not spoken with him about ending the tenancy since sending the email on March 01, 2016

The Tenant stated that he did not provide the Residential Tenancy Branch with a copy of the email that was sent to him on March 01, 2016.

Analysis

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy that complies with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that a notice to end tenancy served pursuant to section 46 of the *Act* must be in the approved form.

On the basis of the undisputed evidence I find that the Landlords have not served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent that was generated by the Residential Tenancy Branch. I therefore find that the Landlords did not serve the Tenant with a Notice to End Tenancy that complies with section 52(e) of the *Act*. As the Tenant’s evidence is that he was not served with a Ten Day Notice to End Tenancy for Unpaid Rent, I am unable to grant the Tenant’s application to set aside a Notice to End Tenancy for Unpaid Rent.

As there is no evidence to show that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that it is not necessary to consider the application for more time to apply to set aside a Notice to End Tenancy.

On the basis of the undisputed evidence I find that one of the Landlords sent the Tenant an email in which he informed the Tenant his rent was overdue and that he must move out in ten days to “avoid legal action”. As this email has not been submitted in evidence, I find there is insufficient evidence to determine whether this email would serve as adequate notice to end the tenancy in accordance with section 10(2) of the *Act*.

To provide clarity to this tenancy, the parties are advised that if the Landlords wish to end the tenancy for unpaid rent they must serve the Tenant with a notice to end tenancy that complies with section 52 of the *Act*, which reads:

- 52(1) In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

I find that there is no need to consider the Tenant's application to recover the filing fee, as no filing fee was paid.

Conclusion

No Orders have been granted.

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: April 21, 2016

Residential Tenancy Branch