



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1057151 LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Residential Tenancy Act* (the Act).

The landlord did not appear for a hearing set for 0930. The hearing remained open until 0942. The landlord did not file any evidence in respect of this application. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions

The tenant testified that he personally served the landlord's agent with the dispute resolution package on 19 February 2016. The tenant testified that the agent he served was the same agent that served the 10 Day Notice on 16 February 2016. On the basis of this evidence, I am satisfied that the landlord was properly served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant was served with the 10 Day Notice on 16 February 2016. The tenant applied to cancel that notice on 19 February 2016.

Analysis

In accordance with subsection 46(4) of the Act, the tenant must file his or her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on 16 February 2016. The tenants filed his application for dispute resolution on 19 February 2016. Accordingly, the tenant filed within the five-day limit provided for under the Act.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the validity of that notice. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet its onus of proof. Thus, the 10 Day Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The 10 Day Notice is set aside and is of no force or effect. The tenancy continues uninterrupted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 28, 2016

Residential Tenancy Branch