



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 5, 2016. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on August 05, 2016. Canada Post tracking receipts were submitted into evidence by the Tenant.

Section 90(a) of the *Manufactured Home Park Tenancy Act* (the *Act*) states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant, I find the Landlord was deemed served notice of this application and hearing on August 10, 2016, pursuant to section 90 of the *Act*. As such, I continued the hearing to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy issued August 3, 2016 be upheld or cancelled?

Background and Evidence

The Tenant has occupied the manufactured home park site for over 16 years based on a verbal tenancy agreement with the previous owner(s). The Tenant's current monthly rent of \$580.00 is payable on the first of each month.

On August 3, 2016 the Landlord posted a 10 Day Notice to end tenancy to the Tenant's door, as per the copy submitted into evidence. That Notice states \$580.00 was due August 1, 2016 and listed an effective date of August 13, 2016.

The Tenant submitted a copy of a receipt dated 2016-06-10 which indicates the Tenant paid \$580.00 for August.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have 5 days to file an application to dispute that notice, pursuant to section 39(4)(b) of the *Act*. Once the Tenant files their application for Dispute Resolution the burden to prove the effectiveness of the 10 Day Notice lies with the landlord.

Section 55(2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed evidence that the Tenant paid his August 2016 rent on June 10, 2016; as supported by his documentary evidence. Accordingly, I find in favor of the Tenant's application to cancel the 10 Day Notice issued August 3, 2016, pursuant to section 55(2) of the *Act*.

Conclusion

The Tenant was successful with his application and the 10 Day Notice issued August 3, 2016 was cancelled.

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: September 26, 2016

Residential Tenancy Branch