



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR; MT, CNR

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the “Act”) in response to a successful application filed by the tenant for review of a decision dated October 18, 2016. In the original decision issued by way of a Direct Request Proceeding, the landlord was granted an order of possession and a monetary order in the amount of \$985.00. The original decision and orders were subsequently suspended by way of a review consideration decision dated October 28, 2016 pending the outcome of this review hearing.

This hearing addressed the tenant’s cross application for more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and cancellation of the landlord’s 10 Day Notice.

The tenant and the landlord’s agent (the “landlord”) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord’s company named in this application, and had authority to speak on its behalf.

Service of 10 Day Notice

The landlord testified that on September 12, 2016 the 10 Day Notice was sent via registered mail to the tenant.

Preliminary Issue – More Time

It is the tenant’s position that he did not receive the 10 Day Notice in a timely manner due to an ongoing issue with his mailbox.

During the hearing, the tenant initially testified that he received the 10 Day Notice on September 21, 2016. Following this, the tenant testified that was incorrect, he actually received the 10 Day Notice on September 18, 2016. The tenant then provided further

testimony that he received the 10 Day Notice on September 23, 2016 and quickly retracted this testimony saying he received it September 23, 2016.

The tenant's application indicates he received the 10 Day Notice on September 25, 2016.

Although the tenant's application indicates he received the 10 Day Notice on September 25, 2016, his testimony was not congruent with this. I find the tenant was not credible, his testimony lacked consistency. As the tenant's testimony was inconsistent in establishing receipt of the 10 Day Notice, I find the tenant was deemed served the 10 Day Notice on September 17, 2016 five days after it was mailed.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 5 days after receiving the notice, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 10 Day Notice has been deemed served on September 17, 2016 the tenant was required to file his application to dispute the 10 Day Notice no later than September 22, 2016. The tenant filed his application on September 26, 2016, past the allotted time. In the absence of corroborating evidence to show he had a legitimate issue with his mailbox, thereby preventing him from filing his application in time, I dismiss the tenant's application in its entirety.

Conclusion

The decision and orders issued on October 18, 2016 are confirmed.

The tenant's application is dismissed.

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: November 18, 2016

Residential Tenancy Branch