



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNSD O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on October 8, 2016. The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order for the return of the security deposit or pet damage deposit; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf, as did the Landlord. Both provided a solemn affirmation.

Although neither party could remember when the Tenant's Application package, including the Notice of a Dispute Resolution Hearing, was served on the Landlord, the Landlord was in attendance and acknowledged receipt in mid-October 2016. I find the Landlord was duly served with the Tenant's Application package. The Landlord did not submit any documentary evidence.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

As part of the Tenant's Application, he requested the return of a security deposit of \$350.00 paid at the beginning of the Tenancy. However, the Tenant continues to reside in the rental unit. Accordingly, I find that this aspect of the Tenant's Application is premature and is dismissed with leave to reapply. As a result, this Decision will address only the Tenant's request for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 1, 2016 (the "10 Day Notice").

Background and Evidence

Neither party submitted a written tenancy agreement into evidence. However, the parties agreed with respect to the terms of the tenancy. The tenancy began on August 1, 2016. Rent in the amount of \$700.00 per month is due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$350.00.

The Landlord provided oral testimony confirming rent was not paid when due on October 1, 2016. Accordingly, the Landlord testified he issued the 10 Day Notice, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on the same date.

During the hearing, the parties were ordered to submit a copy of the notice to end tenancy in dispute, which they did. The Tenant's version indicated it was dated and served on October 1, 2016. The Landlord's version indicated it was dated and served on October 15, 2016. As the Tenant's Application was received on October 8, 2016, before the Landlord's version of the notice to end tenancy could have been received, the Landlord gave testimony regarding the notice to end tenancy issued on October 1, 2016, this hearing will address only the notice to end tenancy bearing that date.

Analysis

Section 46 of the *Act* states that a landlord "may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." [Emphasis added.] In this case, rent was due on October 1, 2016. The Landlord issued the 10 Day Notice on October 1, 2016, which was not the day after it was due. Accordingly, I find the Landlord issued the 10 Day Notice prematurely, and that the 10 Day Notice is invalid.

In light of the above findings, I order that the 10 Day Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

I order that the 10 Day Notice is cancelled. The Tenancy will continue until ended in accordance with the *Act*.

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: December 02, 2016

Residential Tenancy Branch