



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the 10 Day Notice on January 21, 2017, at the rental unit where the tenant is residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 21, 2017, the day it was served.

Preliminary Issue - Tenant's Late Application

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within 5 days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Although the tenant filed an application to dispute the 10 Day Notice, the tenant did not file the application within 5 days. The 10 Day Notice was deemed served January 21, 2017 which allowed the tenant until January 26, 2017 to file his application. The tenant filed his application on January 27, 2017, one day after the allowable time. The tenant failed to attend the hearing to present his claim or provide a reason for filing the application late. Based on the 10 Day Notice before me, I find that the tenant was served with an effective notice.

For the reasons stated above, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. I find that the landlord is entitled to an order of possession.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

An order of possession is granted to the landlord effective **two (2) days after service on the tenant**.

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: February 27, 2017

Residential Tenancy Branch