



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with 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 landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that an agent of the landlord was personally served with the tenant's application for dispute resolution hearing package on March 21, 2017. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application on March 21, 2017, the day it was served.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenant testified that this tenancy began on July 12, 2011 on a month-to-month basis. The tenant did not provide a copy of the tenancy agreement, but testified rent in the amount of \$595.00 is payable on the first of each month. The tenant remitted a security deposit at the start of the tenancy, which the landlord retains in trust. The tenant continues to reside in the rental unit.

On February 22, 2017 the tenant received a letter from the landlord in relation to unpaid March 2016 rent in the amount of \$614.52. On March 30, 2017 the tenant received a 10 Day Notice of unpaid rent of \$614.52 due on March 1, 2017. The notice indicates an

effective move-out-date of April 2, 2017. As part of her documentary evidence, the tenant provided a copy of the letter and 10 Day Notice issued by the landlord.

The tenant testified that the ministry pays her rent directly to the landlord. She testified that all rent has been paid to date, including March 2016 rent. In an effort to support her claim, the tenant provided a printout from the ministry showing all payments made on her behalf in March of 2016. The printout includes a rent payment of \$595.00.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant pays the rent or files an application to dispute the notice, the landlord bears the burden to prove the grounds for the notice. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 10 Day Notice.

Conclusion

The tenant's application to cancel the 10 Day Notice is upheld. The tenancy continues until it is 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: April 21, 2017

Residential Tenancy Branch