



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2017, with an effective date of January 14, 2017 (the “10 Day Notice”) and for more time in which to do so.

Both the tenant and the landlord attended the hearing. The landlord’s agent and a witness for the landlord also attended. The tenant and the landlord and the landlord’s agent gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form and to make submissions. The witness’s testimony was not required as it was not relevant to the issues before me.

Service of the tenant’s application and notice of hearing was not at issue.

Over the course of the hearing it became clear that the tenant was within the time limit set out in the Act to dispute the 10 Day Notice, and she therefore withdrew her application for more time.

Issues

Is the tenant entitled to an order cancelling the 10 Day Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

Neither party submitted the tenancy agreement. The landlord submitted only a letter documenting the agency relationship referred to above and a copy of another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on the tenant in April. The tenant's evidence was also minimal and as she had not served it on the landlord it was not considered.

The parties agreed that this tenancy began in or around August of 2016. The landlord advised that it was for a one year term. The parties agreed that rent was \$1,400.00 monthly and that it is due on the first of the month. A security deposit of \$700.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The 10 Day Notice before me is dated January 4, 2017. It has an effective date of January 14, 2017. It indicates that the tenant has failed to pay rent of \$1,400.00 that was due on March 23, 2017. The parties agreed that the tenant was personally served with the 10 Day Notice on March 23 or 24, 2017. The landlord advised that he signed the 10 Day Notice before he left the country and left it with his agent in the event that rent was unpaid.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The 10 Day Notice was served on March 24, 2017 and the tenant applied on March 29, 2017 to dispute it. The tenant is therefore within the 5 day timeline permitted by s. 46. The tenant agrees that March rent remains outstanding. However, March rent was not owed of January 4, 2017, which is the date that the landlord signed and dated the 10 Day Notice. The 10 Day Notice is therefore premature.

Section 55 of the Act allows me to issue an order of possession in favour of the landlord where the tenant's application to dismiss a notice to end tenancy is dismissed or the landlord's notice is upheld, provided that the landlord's notice complies with s. 52. However, the 10 Day Notice before me does not comply with s. 52 for the reasons

stated above. The 10 Day Notice before me is therefore not effective and it is cancelled.

Conclusion

The tenant's application is allowed and the 10 Day Notice is cancelled. The tenancy continues until it is ended in accordance with the Act.

As set out above, the landlord issued and served another 10 Day Notice in April. This decision does not affect that second 10 Day Notice because it was not the subject of this hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: May 4, 2017

Residential Tenancy Branch