



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 5, 2017, and One Month Notice to End Tenancy for cause issued on May 30, 2017.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on June 15, 2017, a Canada post tracking number was provided as evidence of service, the landlords’ did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and procedural matter

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the One Month Notice to End Tenancy for Cause.

This matter was set for hearing by telephone conference call at 9:30 A.M. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant.

Since the landlord did not attend the hearing by 9:40 A.M to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the landlord has failed to show cause to end the tenancy.

Therefore, I grant the tenant's application to cancel the One Month Notice to End Tenancy for cause issued on May 30, 2017, and the Notice has no force or effect.

Issue to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Notice be cancelled?

Background and Evidence

The tenant testified that they received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant stated they paid their rent within the 5 days which was sent by etranfer to the landlord and was received by the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

I accept the undisputed evidence of the tenant that rent was paid within 5 days of receiving the notice to end tenancy. I find pursuant to section 46(4)(a) of the Act, that the notice has no force or effect.

Conclusion

The tenant's application to cancel the notices to end tenancy is granted. The tenancy will continue until legally 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: August 08, 2017

Residential Tenancy Branch