



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

a A matter regarding MACDONALD COMMERCIAL R.E.S LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent. The tenant also applied for compensation for the time he did not have the full use of the rental unit due to painting and for the recovery of the filing fee.

The notice of hearing was served on the landlord on October 27, 2017 by registered mail. The tenant provided a tracking number. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Background and Evidence

The tenancy began on September 15, 2017. The monthly rent is \$1,600.00 payable on the first day of each month. The tenant was supposed to pay prorated rent for the month of September and this was due on October 01, 2017 in the amount of \$841.60. The tenant failed to pay this amount and on October 10, 2017, the landlord served him a notice to end tenancy for non-payment of rent in this amount.

The tenant stated that he thought he had 10 days to dispute the notice and accordingly he applied for dispute resolution on October 23, 2017. The tenant agreed that he had not paid the outstanding rent but had kept it towards the loss of use of the rental unit while it was being painted.

The tenant testified that other than \$841.60, he is up to date on rent and the landlord has been accepting rent for every month starting October 2017 to date. The landlord did not notify the tenant that the rent was accepted for use and occupancy only.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant did not pay rent. The landlord did not attend the hearing. The landlord also continued to accept rent from the tenant without informing him that it was accepted for use and occupancy only. The tenant was given to understand that the tenancy was reinstated.

Based on the above, I find that the notice to end tenancy must be set aside and the tenancy will continue.

The remainder of the tenant's application is dismissed with leave to reapply after he catches up on rent owed. The tenant must bear the cost of filing his own application.

Conclusion

The notice to end tenancy is set aside and the tenancy shall continue.

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: January 11, 2018

Residential Tenancy Branch