



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent.

Some documentary evidence and written arguments have been submitted prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.

Background and Evidence

The tenant testified that on January 2, 2018, she received a 10 day Notice to End Tenancy for nonpayment of rent, and therefore on January 3, 2018 she filed a dispute of that notice.

The tenant further stated that she does not understand why the landlord is allowed to give a 10 day Notice to End Tenancy for nonpayment of rent, and believes it should be a two or three month notice.

The tenant further stated that she wants the Notice to End Tenancy canceled as she paid her rent, in full, on January 6, 2018.

The landlord testified that the tenant did pay her rent in full on January 6, 2018, thereby voiding the Notice to End Tenancy, and therefore this tenancy continues.

The landlord further stated that there was really no need for this hearing if the tenant was planning to pay the full rent within the five day grace period.

Analysis

Section 46 of the Residential Tenancy Act states:

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]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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
(my emphasis)**

In this case, the tenant did pay the full outstanding rent within five days of receiving the Notice to End Tenancy, and therefore the notice has no effect and this tenancy continues.

Therefore there is no need for me to make any finding on whether or not to cancel or uphold the Notice to End Tenancy, as that notice is already void.

Conclusion

The tenant paid the overdue rent within five days of receiving the Notice to End Tenancy, and therefore the notice has no effect, and this tenancy continues.

I have issued no order canceling the Notice to End Tenancy, as it is already void.

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 29, 2018

Residential Tenancy Branch