



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated January 4, 2018, given alleging non payment of January rent of \$525.00.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the Notice a valid Notice?

Background and Evidence

The manufactured home site (the “site”) is located on rural property. It appears to be the only site on the property, the former farm of the tenant’s father, Mr. A.D., who also attended the hearing.

There is a written tenancy agreement for a year to year tenancy commencing December 1, 2016 (the agreement misstates the year as 2015). The monthly rent is \$500.00.

It is agreed that no rent has been paid since before September 2017.

The tenant’s father’s farm was foreclosed. The landlord purchased it in the foreclosure. The tenant and his father claim that the landlord owes the father money for the

purchase of farm equipment and possibly livestock. The tenant considers that the money the landlord owes to his father should be offset against the rent he owes to the landlord.

This issue was dealt with an earlier proceeding (six digit file number recorded on cover page of this decision). In that matter the arbitrator set aside the ten day Notice in question but directed that the tenant was obliged to pay the rent starting September 1, 2017. She stated:

However, the Tenant should be aware that they must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless they have a right under the Act to deduct all or a portion of the rent. As a result, the Landlord remains at liberty to exercise their rights under the Act regarding the non-payment of rent on or after September 1, 2017.

He has not paid the rent.

Analysis

Subsections 46(4) and (5) of the *Act* provide:

(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

It is apparent that the tenant has not paid the rent owing under his tenancy agreement and that any claim to setoff he might have had regarding money owed to his father has been dispensed with in the previous hearing.

I find that the ten day Notice is a valid Notice and has resulted in this tenancy ending on January 16, 2018. Pursuant to s. 55 of the *Act*, the landlord will have an order of possession.

Conclusion

The tenant's application is dismissed.

This matter also resolves the tenant's application to cancel an earlier ten day Notice, set for hearing February 23, 2018 (eight digit file number shown on cover page of this decision).

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: February 08, 2018

Residential Tenancy Branch