



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated January 3, 2018 to be effective January 15, 2018 by registered mail which the tenant said he received on January 9, 2018. The tenant said they served the landlord with their Application for Dispute dated January 9, 2018 by registered mail and the landlord acknowledged receipt. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began December 2016, the current rent is \$1350 a month and a security deposit of \$675 was paid. The landlord testified that the tenant failed to pay the rent for January but it is now paid. She said there was a misunderstanding for the lease was a fixed term and they expected the tenancy to end on December 31, 2017. They acknowledged the rent was not the main problem but they hoped to regain possession of the unit in accordance with the fixed term lease.

The tenant said he had consulted the Residential Tenancy Branch and knew he was not required to vacate the unit. He sent his rent to the landlord on January 9, 2018.

The landlord was surprised that new legislation provided that a fixed term lease could no longer require vacant possession except in very limited circumstances covered in the legislation. I directed her to read Policy Guideline 30 for her information.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent.

I find the tenant disputed the Notice and paid the outstanding rent within the 5 days allowed by section 46 (4) so I hereby set aside and cancel the Notice to End Tenancy dated January 3, 2018.

Conclusion:

The Notice to End Tenancy dated January 3, 2018 is hereby set aside and cancelled. The tenancy is continued. I find the tenant is entitled to recover his filing fee due to his success.

I HEREBY ORDER that the tenant may recover his \$100 filing fee by deducting \$100 from his next rental payment.

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: March 08, 2018

Residential Tenancy Branch