



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The Ten Day Month Notice to End Tenancy is dated March 12, 2018 to be effective March 23, 2018 and the tenant confirmed it was served by posting it in her mail slot. She said she did not receive it until March 16, 2018 as she was out of town. I find she is deemed to have received it on March 15, 2018 pursuant to section 90 of the Act. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated March 26, 2018 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;

Issue(s) to be Decided:

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 undisputed evidence is that the tenancy commenced May 1, 2013, rent is \$700 a month and a security deposit of \$350 was paid. The landlord stated it is currently a fixed term tenancy that expired on March 31, 2018 and the boxes were initialled that vacant possession was to be delivered on that date. He said the tenant paid the rent due according to the 10 Day Notice and he understands that made the Notice void. However he explained that they are concerned about obtaining vacant possession as was agreed on the residential tenancy agreement which was a contract between the parties.

The tenant said she had surgery in January and a third party was to have forwarded her rent on time but did not. However she paid it when she received the 10 Day Notice and realized it had not been paid.

I advised the landlord of the changes in the legislation which mean a landlord may no longer require vacant possession at the end of a fixed term. He was upset as he said the lease was a legal contract and it violated his rights that the government could nullify an agreed term. I advised him to speak to his MLA about his concerns as the matter was now law and I was obliged to follow it in my decisions. I referred him to Policy Guideline 30 for the explanation. The tenant said that announcement had been in the news last December and that was why she did not plan to vacate her home.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Section 46 of the Act provides a landlord may serve a 10 Day Notice to End Tenancy for unpaid rent. Section 46(4) provides a tenant may pay the overdue rent within 5 days after receiving the notice and the notice is then of no effect. I find the landlord confirmed that the tenant had paid the overdue rent in time. I set aside and cancel the Notice to End Tenancy dated March 12, 2018.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy dated March 12, 2018 is successful. The tenancy is continued. The filing fee was waived. .

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: April 18, 2018

Residential Tenancy Branch