



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- cancel the landlord's 10 day notice to end tenancy for unpaid rent ("10 Day Notice"), pursuant to section 46; and

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenant and his agent (collectively "the tenant") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was personally served with the tenant's application for dispute resolution hearing package ("application") on January 18, 2019. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's application on January 18, 2019.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenant testified that this tenancy began October 1, 2018 on a month-to-month basis. Rent in the amount of \$725.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$425.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 10 Day Notice dated January 4, 2019 by way of posting, on January 5, 2019.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within time, the landlord bears the burden to prove the grounds for the 10 Day Notice.

The tenant disputed the 10 Day Notice within five days. Specifically, he received the 10 Day Notice on January 5, 2019 and filed his application on January 8, 2019. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 10 Day Notice.

Conclusion

The tenant's application to cancel the 10 Day Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

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 31, 2019

Residential Tenancy Branch