



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. At the outset, the tenant clarified that she was dealing with a 4 month notice to end tenancy. The landlord's agents (the landlord) confirmed that they were responding to an application to cancel a 10 Day Notice. The tenant stated that she had filed a second application for dispute of a 4 month notice with a different date. It was clarified with both parties that the dispute resolution hearing scheduled was to resolve a dispute of a 10 Day Notice. Both parties indicated that they understood. The tenant stated that she was prepared to proceed with the hearing. Neither party raised any service issues. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. The landlord stated that the submitted documentary evidence was not served to the tenant. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act. On the landlord's documentary evidence, I find that no attempt at service was made to the tenant and as such, the landlord's submitted documentary evidence is excluded from consideration in this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with a 10 Day Notice dated January 14, 2019 in person on January 14, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$1,061.00 that was due on January 1, 2019 and provides for an effective end of tenancy date of February 14, 2019.

The tenant disputes the 10 Day Notice dated January 14, 2019 stating that a rental arrears indicated of \$1,061.00 is incorrect. The landlord clarified that the \$1,061.00 amount indicated consists of:

\$836.00	Unpaid Rent, January 2019
\$25.00	Late Rent Charge
\$100.00	Unpaid Rent, December 2018
\$100.00	Unpaid Rent, November 2018

The landlord stated that monthly rent was \$936.00 and that the tenant had been paying \$836.00 per month accumulating arrears. The tenant disputed the landlord's claim that monthly rent was \$936.00 and that rent is \$836.00.

The landlord was unable to provide any supporting evidence that monthly rent was \$936.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlord served the tenant with a 10 Day Notice dated January 14, 2019. I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. Both parties confirmed the contents of the 10 Day Notice, however, the tenant has disputed that monthly rent is \$936.00. The tenant indicated that monthly rent payable is \$836.00. I also note that the landlord's details on the monetary claim are inconsistent as they provided details that the 10 Day Notice dated January 14, 2019 indicates that rent owed at that time was \$1,061.00.

The details provided above by the landlord's agents are based upon a monthly rent owed of \$836.00 for January 2019 as opposed to the landlord's direct testimony that monthly rent is \$936.00. With these discrepancies, the lack of details and no supporting evidence by the landlord regarding the monthly rent, the tenant's application is granted. The 10 Day Notice dated January 14, 2019 is cancelled and the tenancy shall continue.

Conclusion

The tenant's application to cancel the 10 Day Notice is granted.

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 04, 2019

Residential Tenancy Branch