



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR

Introduction:

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. on May 2, 2019. The tenant attended the hearing and gave sworn testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that he served the Application for Dispute Resolution by having a friend who belonged to an organization of which he was a member deliver it for him. He could not remember the friend's name and had filed no proof of service. I find insufficient evidence that the landlord was served as required according to section 89 of the *Residential Tenancy Act* (the Act). The tenant applies to cancel a 10 Day Notice dated March 27 to be effective April 7, 2019 for unpaid rent.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Only the tenant and his witness attended the hearing. He was given opportunity to be heard, to provide evidence and to make submissions. He agreed he owed \$1000 in rent for March 2019 as stated in the 10 Day Notice and he never paid it. He said he had put in a fence and flooring at his own expense and the landlord was selling the house and listing the fence as a feature. He felt entitled to withhold March rent in payment although the landlord had not agreed to compensate him for the fence.

He said after he filed his Application, the landlord asked him to cancel the arbitration and removed the fence. He said he also threatened to sue him for damages. The

tenant then vacated the property and agreed that this was possibly why the landlord had not attended the hearing.

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. Although the tenant disputed the Notice in time, and he may have a potential monetary claim against the landlord, none of his complaints constitute valid reasons to withhold his rent. Section 26 of the Act provides that rent must be paid on time, whether or not the landlord fulfills their obligations under the Act. I therefore dismiss his application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. However, I find insufficient evidence of service of the tenant's Application and the tenant has vacated so I find this is not necessary.

Conclusion:

I dismiss the tenant's application. His 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: May 02, 2019

Residential Tenancy Branch