



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR FF
	Tenant:	CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on August 28, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on August 12, 2019 (the “Tenant’s Application”). The Tenant applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, pursuant to the *Act*.

The Landlord attended the hearing. The Tenant attended the hearing and was assisted by M.B., an advocate. The Landlord and the Tenant provided affirmed testimony.

On behalf of the Landlord, J.D. acknowledged the Landlord’s Application package was not served on the Tenant in accordance with the *Act*. Therefore, the Landlord’s Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

On behalf of the Tenant, M.B. advised that the Tenant's Application package was served on the Landlord by registered mail on August 13, 2019 and was received by the Landlord on August 15, 2019. J.D. confirmed, and I find, that the Tenant's Application package was received by the Landlord on August 15, 2019.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue

Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on March 1, 2008. Rent in the amount of \$1,166.00 per month is due on the first day of each month.

The parties agreed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 6, 2019 (the "10 Day Notice") was served on and received by the Tenant on August 6, 2019. The parties also agreed that rent was paid by the Tenant on August 9, 2019.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. Section 46(4) of the *Act* confirms a tenant has five days after receipt of a notice to end tenancy to pay the overdue rent or dispute the notice by making an application for dispute resolution. If rent is paid within 5 days after receipt of the notice, it is of no effect.

In this case, I find the Tenant paid rent on August 9, 2019, three days after receipt of the 10 Day Notice. As a result, the 10 Day Notice is of no effect and is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I order that the 10 Day Notice is of no effect and is cancelled. The tenancy will continue until otherwise 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: October 4, 2019

Residential Tenancy Branch