



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR CNC

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the One Month Notice), pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord did not attend this hearing, although I waited until 11:15 a.m. to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on November 29, 2019, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

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

Background and Evidence

The 10 Day Notice and One Month Notice subject to this dispute are dated December 13, 2019. The tenant's application to cancel the One Month Notice was filed on November 19, 2019 and the tenant's application indicates he received both Notices November 14, 2019. Clearly, both Notices to End Tenancy were incorrectly dated and the tenant's application was filed within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

The tenant testified that due to a bank error his rent payments were reversed, and he has since re-paid all the outstanding rent in full. The landlord did not participate in the hearing and as such has failed to provide sufficient evidence to justify grounds to issue both the 10 Day Notice and the One Month Notice. Accordingly, both the 10 Day Notice and the One Month Notice is hereby cancelled and of no force or effect.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice and One Month Notice both dated December 13, 2019, which are hereby cancelled and of no force or effect. This 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 16, 2020