



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASTORIA HOTEL
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 or Utilities ("the Notice), pursuant to section 46.

Although I left the teleconference hearing connection open until 11:26 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M., the landlord did not attend this hearing. The tenant attended the hearing and was affirmed. 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.

I accept the tenant's testimony that the landlord was served with the Notice of Hearing and evidence (the Materials) in person on February 06, 2020. The tenant affirmed he delivered the Materials to manager LA at 3:00 P.M. and LA threw the Materials away and told the tenant he would be evicted. I find the landlord was served in accordance with section 89(1)(a) of the Act.

Issue to be Decided

Is the tenant entitled to an order for cancellation of the Notice?

Background and Evidence

The tenant affirmed the monthly tenancy started in October 2019. Monthly rent is \$500.00, due on the first day of the month. There is a written tenancy agreement, but the tenant does not have a copy of it. At the outset of the tenancy the landlord collected a security deposit of \$250.00 and still holds it in trust.

The tenant affirmed he received the Notice in person on February 02, 2020. A copy of the Notice was provided. The Notice indicates the tenant was in arrears for \$500.00, which was due on February 01, 2020. The effective date of the Notice is February 14, 2020.

The tenant filed this application on February 06, 2020. The tenant affirmed he paid \$200.00 for February's rent on January 23, 2020 and was in arrears only for \$300.00 on February 02, 2020. The tenant affirmed on February 23, 2020 he tried to pay the balance, and March's rent, in a total of \$800.00. However, manager DA refused to receive this payment. The next day the tenant's rental unit was invaded, and his belongings were stolen. The tenant left the building on February 24, 2020.

The tenant affirmed he only could pay the balance of February's rent on February 23, 2020 because he only received his payment on that day.

Analysis

Pursuant to section 46(4)(b) of the Act, the tenant disputed the Notice in time.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Since the landlord has not attended the hearing or presented any evidence, I find that the landlord has failed to satisfy its burden of proving the validity of the Notice. Accordingly, the Notices is cancelled and of no force of effect. This tenancy will continue in accordance with the Act. The tenant may apply for an order of possession.

Conclusion

The Notice is cancelled and of no force of effect.

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 30, 2020