



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 24, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 21, 2020 (the "10 Day Notice").

The hearing was scheduled for 11:00 A.M. on November 26, 2020 as a teleconference hearing. Only the Tenant attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Tenant and I were the only persons who had called into this teleconference.

The Tenant stated that he served the Application and his documentary evidence to the Landlord by registered mail on September 30, 2020. The Tenant provided the registered mail tracking information during the hearing. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on October 5, 2020, the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an 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. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?

Background and Evidence

The Tenant stated that the tenancy began on September 1, 2019. Currently, the Tenant is required to pay rent in the amount of \$1,150.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 which the Landlord continues to hold. The Tenant stated that he continues to occupy the rental unit. The Tenant provided a copy of the tenancy agreement in support.

The Tenant stated that he was unable to pay rent on time for September 2020. As such, the Tenant stated that he received the 10 Day Notice dated September 21, 2020 on by mail September 24, 2020. The Tenant stated that he and the Landlord had an agreement that the Tenant would be permitted to pay the rent late. The Tenant stated that he paid both September and October 2020 rent in full on October 6, 2020. The Tenant provided the bank records in support. The Tenant stated that he is back on track with paying rent on time when due to the Landlord.

No one attended the hearing for the Landlord.

Analysis

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

I accept the Tenant's testimony that he has paid the outstanding rent as indicated on the 10 Day Notice to the Landlord on October 6, 2020. While this payment of rent was late, I accept that the Landlord and the Tenant agreed to the late payment. As no one attended the hearing to dispute the Tenant's claims, I find that the 10 Day Notice dated September 21, 2020 is cancelled. I find that the tenancy will continue, unless it is ended in accordance with the Act.

Conclusion

The Tenant's Application is successful. The 10 Day Notice dated September 21, 2020 is cancelled.

The tenancy will continue until 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: November 26, 2020

Residential Tenancy Branch