



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on May 10, 2021 seeking an order to cancel the 10-Day Notice for Unpaid Rent. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 17, 2021. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

Issues to be Decided

Is the tenant entitled to an order to cancel the One Month Notice pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the One Month Notice, is the landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

With their Application, the tenant provided a copy of the 10-Day Notice. The landlord served this to the tenant on May 5, 2021, for an end-of-tenancy date of May 17, 2021.

In the hearing the tenant advised they reached an agreement with the landlord for rent amounts owing. This was four days in advance of the hearing, on September 13, 2021. The landlord agreed that the tenancy will not end. Going forward, the parties have an agreement in place for rent amounts still owing.

The landlord did not provide documentary evidence for this hearing and did not attend to provide oral testimony.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

The *Act* s. 46(4) states that within 5 days of receive a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application. Here, I find the landlord served Notice #1 to the tenant on May 5, 2021, with nothing to counter the information provided by the tenant in the evidence. The tenant applied to cancel on May 10, 2021, within the legislated timeline.

When a landlord issues a 10-Day Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the 10-Day Notice was issued pursuant to s. 46(1), and I find the tenant received this document on May 5, 2021. As the tenant filed their Application on May 10, 2021, I find they dispute the 5-Day Notice within the timeframe required by the *Act*.

In the absence of the landlord or any evidence from the landlord to support the reason listed in the 10-Day Notice, I order the 10-Day Notice cancelled. The tenancy continues until it may otherwise legally end under the *Act*.

Conclusion

For the reasons above, I order the 10-Day Notice is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 17, 2021

Residential Tenancy Branch