



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CYCLONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with the landlord's Application for Dispute Resolution (the Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

On March 22, 2023, the landlord was granted an order of possession and a monetary order for the unpaid rent.

On March 30, 2023, the tenant applied for a review consideration, which on April 3, 2023, the Arbitrator determined that a new hearing is required, and this matter was scheduled for a participator hearing scheduled for today, May 8, 2023, at 9:30 am.

Both parties appeared.

At the outset of the hearing the tenant stated that rent was paid on January 2, 2023. The landlord's agent indicated they that they filed their application based on late payments of rent.

In this case, I must dismiss the landlord's application. The landlord cannot proceed with a hearing based a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, when rent has been paid within 5 days of receiving the Notice as under section 46(4) of the Act the notice is automatically cancelled and has no effect. The landlord cannot end the

tenancy under section 46 of the Act for late payments as that would require a notice to end tenancy under section 47 of the Act.

Therefore, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on January 2, 2023, and the original decision and order of possession dated March 22, 2023, are set aside.

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: May 08, 2023

Residential Tenancy Branch