



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated October 4, 2012 with effective of October 16, 2012.

Both parties appeared with supporters and gave testimony during the conference call.

Issue(s) to be Decided

Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled?

The burden of proof is on the landlord/respondent to justify the Ten-Day Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent dated October 4, 2012 indicating that he owed rental arrears of \$692.00 due on October 1, 2012 was owed.

The tenant testified that he paid \$600.00 towards his rent of \$692.00 on October 1, 2012. The tenant submitted a receipt from the landlord for \$600.00 dated October 1, 2012.

The tenant stated that he attempted to pay the remaining \$92.00 owed on October 5, 2012, but the payment was refused by the landlord.

The landlord disputed this testimony and stated that, although the tenant had approached her to talk about the remaining rent owed, at no time did he try to actually pay the arrears. The landlord testified that, in fact, the tenant has failed to pay the \$692.00 rent that was due on November 1, 2012.

The tenant acknowledged that November rent was not paid, but stated that this was because the landlord would not accept his payment and his efforts to pay were thwarted by the landlord.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay all of the rent for October 2012 when it was due on October 1, 2012. When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. I find that the landlord issued and served this Notice on October 4, 2012.

This section of the Act also provides that, within 5 days after receiving a notice under this section, a tenant may pay the arrears and that this would automatically cancel the Notice. I accept the tenant's testimony that he attempted to pay the arrears of \$92.00.

A tenant can dispute a Ten Day Notice to End Tenancy for Unpaid Rent by making an application for dispute resolution. In this instance I find that the tenant did make an application to dispute the Notice within the five-day period. I find that the landlord circumvented the tenant's statutory right to cancel the Notice by paying the debt within 5 days

I also find that the Ten Day Notice to End Tenancy for Unpaid Rent wrongly indicated that the amount of rent owed by the tenant on October 4, 2012, when it was issued was \$692.00, despite the fact that the tenant had already paid \$600.00 of this rent on October 1, 2012 and received a receipt for the payment.

For the reasons above, I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated October 4, 2012, must be cancelled.

However, I find that the tenant does still owe the landlord \$92.00 for October 2012, and a further \$692.00 for November 2012 that must be paid forthwith by a money order in the amount of \$784.00 payable to the landlord. Should the tenant fail to pay all of the rent owed to date, the landlord is at liberty to issue another Ten Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent dated October 4, 2012 is cancelled and the tenant agreed to pay arrears owed to date by money order.

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 13, 2012.

Residential Tenancy Branch