



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified the landlord "Christine" was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on March 27, 2014 in accordance with Section 89.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 and 66 of the *Act*.

Background and Evidence

The tenant testified the tenancy began 7 or 8 years ago and is currently a month to month tenancy for the monthly rent of \$910.00 due on the 1st of each month with a security deposit of \$387.50 paid.

The tenant provided no documentary evidence but testified that she received:

- A 10 Day Notice to End Tenancy for Unpaid Rent dated March 5, 2014 with an effective vacancy date of March 18, 2014 due to unpaid rent in the amount of \$780.00; and
- A letter dated March 24, 2014 explaining that the landlord had posted a 10 Day Notice to End Tenancy and that the landlord would be pursuing the end of the

tenancy if the tenant did not pay the balance of the outstanding rent by March 28, 2014. The tenant submits the letter also included a copy of a tenant ledger.

The tenant submits that both documents appear to have been pushed underneath the door of her rental unit. She stated that she did not find either document until March 25, 2014. She states that she cannot confirm when the Notice was placed there because it was all crumpled up in an area that has a number of shoes.

The tenant submits that despite the landlord's assertion in the Notice and the letter the tenant submits that she has paid all of her rent for the duration of the tenancy.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant 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) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

However, Section 88 states that all documents that are required or permitted under the *Act* to be given or served on a person must be given or served:

- a) By leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) By sending a copy by ordinary or registered mail to the address at which the person resides or, if the person is a landlord to the address at which the person carries on business as a landlord;
- d) If the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- e) By leaving a copy at the person's residence with an adult who apparently resides with the person;
- f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- h) By transmitting a copy to a fax number provided as an address for service by the person to be served;
- i) As ordered by the director under Section 71(1);
- j) By any other means of service prescribed in the regulations.

Based on the tenant's undisputed testimony I find that by sliding the 10 Day Notice to End Tenancy issued on March 5, 2014 under the tenant's door the landlord failed to serve the Notice to End Tenancy in accordance to Section 88.

Based also on the tenant's undisputed testimony I find that as a result of the landlord's failure to serve the Notice pursuant to Section 88, the tenant only received the Notice on March 25, 2014. As such, the tenant was allowed until March 30, 2014 to submit her Application for Dispute Resolution seeking to cancel the Notice to be compliant with Section 46(4).

I find the tenant submitted her Application on March 27, 2014 and is therefore has met the 5 day deadline required under Section 46(4). I further find there is no need for the tenant to be granted an extension of time to file her Application.

Despite the fact that it was the tenant's Application for Dispute Resolution the burden is on the landlord to provide sufficient evidence that the landlord had the required grounds to end the tenancy under Section 46. As the landlord has not attended the hearing or provided any evidence, I find the landlord has failed to establish the tenant had any outstanding rent at the time the Notice was issued.

Conclusion

Based on the above, I grant the tenant may cancel the 10 Day Notice to End Tenancy for Unpaid Issued by the landlord on March 5, 2014 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 14, 2014

Residential Tenancy Branch

