



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with the tenant's application pursuant to section 46 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice").

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application package. The landlord confirmed that she did not provide any documentary evidence for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, the tenancy began on March 1, 2016 on a fixed term until February 28, 2017 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,800.00 is payable on the first of each month. The tenant prepaid the entire rent from March 1, 2016 to February 1, 2017, at the start of the tenancy. The tenant remitted a security deposit in the amount of \$900.00 at the start of the tenancy, which the landlord still retains. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the 10 Day Notice, dated March 15, 2017, posted to the rental unit door. This 10 Day Notice indicates rent in the amount of \$1,800.00 due March 1, 2017 remains outstanding and states an effective move-out date of March 28, 2017.

The tenant agreed March rent was not paid, however she contends that she had a verbal agreement with the landlord to withhold this rent. The landlord denied such an agreement exists.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The tenant filed her application within five days but at no time did the tenant argue that March rent had been paid in full; instead she argued that she had a verbal agreement to withhold rent. The tenant failed to provide sufficient evidence to substantiate such an agreement. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. I find the tenant was obligated to pay March rent and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

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: April 24, 2017

Residential Tenancy Branch