



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the "Act"), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 21, 2018.

Both the Tenants and Agents for the Landlord (the Agents) attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue(s) to be Decided

- Should the 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession.

Background and Evidence

The undisputed testimony of both parties confirmed that the tenancy began on September 1, 2001 as a month to month tenancy. Rent in the amount of \$1,015.00 was due each Month; however, the Tenant was able to apply for a rental subsidy each year. The Tenant paid the Landlord a \$508.00 security deposit and the beginning of the tenancy. Both the Tenant and the Agents agreed that the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by posting it to the door of the rental unit on March 21, 2018, with an outstanding rent amount of \$6,354.00 at the time of service.

The Agents testified that they received the full outstanding rent on March 29, 2018, and that they had also accepted the April rent payment from the Tenant on April 9, 2018.

The Agents testified that they did not issue the Tenant a receipt for either of these rent payments. The Agents confirmed that the Tenant is currently up to date in her rent payments, but that they still want to end the tenancy as the Tenant had not paid the outstanding rent within the Five days allowed by the Notice.

The Tenant stated she had informed the Agents that she was having difficulties paying rent due to personal circumstance and that she had appreciated how accommodating the Agents had been. The Tenant testified that she is now current with her rent payments and that she would like to continue in her tenancy.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Agents served the Notice to End Tenancy on March 21, 2018 by attaching it to the door of the Tenant's rental unit, which is an approved method of service provided for under section 88 of the *Act*. Section 90 of the *Act* states that unless it is shown otherwise, a document served in this manner is deemed to have been received three days after the day in which the notice was posted.

When documents are considered to have been received

90 *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:*

- (a) if given or served by mail, on the 5th day after it is mailed;*
- (b) if given or served by fax, on the 3rd day after it is faxed;*
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;*
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.*

Without evidence to the contrary, I find that the Tenant was deemed to have received the Notice on March 24, 2018.

When a tenant receives a 10-Day Notice to end tenancy the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this the notice is of no effect, as per section 46(4) of the *Act*.

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.

In this case, the Agents testified that they collected the full outstanding rent as indicated on the Notice on March 29, 2018. I find that the Tenant did pay the outstanding amount due within five days of receiving the Notice, as allowed by the Act, rendering the Notice of no effect. Therefore, I find the Notice was of no effect under the Act and I must allow the Tenants' application to cancel the Notice.

Conclusion

I allow the Tenants' Application to dispute the Notice, as I find the Notice was of no effect after the Tenants paid the outstanding rent within the five day period set out under the Act. The tenancy will continue until ended in accordance with the Act.

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 19, 2018

Residential Tenancy Branch