



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to provide testimony, to present evidence and to make submissions.

The tenant testified that on November 5, 2018, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by International post through FedEx. The tenant provided a tracking number in support of service. I note that the landlord had also uploaded evidence in response to the tenant's application.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

The tenant's application to cancel the 10 Day Notice was filed on November 2, 2018 within the time period permitted under the Act.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The 10 Day Notice to End Tenancy subject to this dispute is dated November 2, 2018.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

The landlord failed to participate in the hearing and failed to provide sufficient evidence that the Notice was issued on valid grounds.

Accordingly, the 10 Day Notice to End Tenancy dated November 2, 2018, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy, dated November 2, 2018, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: December 11, 2018

Residential Tenancy Branch