

## **DECISION**

Dispute Codes      MT CNR MNDC FF O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to allow more time to make application, to cancel a notice to end tenancy for unpaid rent and to recover the filing fee from the landlord for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, delivered in person by the tenant on March 13, 2009. The landlord confirmed receipt of the hearing documents.

Both the landlord and tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is granted an extension to apply to cancel a notice to end tenancy pursuant to section 66 of the *Residential Tenancy Act*
- Whether the tenant is successful in their application to cancel a notice to end tenancy for unpaid rent
- Whether the tenant is entitled to a monetary claim for loonies lost in the laundry

### Background and Evidence

This tenancy was a fixed term commencing on February 1, 2009, ending on January 31, 2010, with rent of \$685.00 payable on the first of each month. The tenant paid \$342.50 for a security deposit on January 25, 2009.

The landlord advised that the tenant has paid his rent late since the onset of this tenancy. The tenant paid rent late, in two payments for the months of February, March, and April, 2009. The landlord testified that the rent is now paid in full but that the landlord is still seeking an Order of Possession to have this tenancy end as soon as possible.

The landlord testified that a 10 Day Notice to End Tenancy was delivered personally to the tenant on March 3, 2009 at 11:03 p.m. and when the tenant opened the door a grey cat came out. The landlord advised that there are no pets allowed in the building. The service of the notice was confirmed by the landlord's witness and the tenant. The landlord stated that March rent was not paid in full until March 13, 2009.

The tenant testified that the owner told him it was okay to have a cat. The tenant stated that he works part time as a caregiver for a disabled person and that when he received the notice to end tenancy the tenant was unable to apply to dispute the notice as his client was ill and the tenant could not leave his client's side.

The tenant stated that because he only works part time, his income is limited, and finds that in order to manage all of his bills he has had to pay his rent late, in two payments.

The tenant testified that he has lost up to 24 loonies in the laundry facilities and that he has requested reimbursement from the landlord, but has not received any money.

The landlord testified that she was aware that the tenant lost approximately \$4.00 in the laundry machines not \$24.00 and that she forgot to reimburse the tenant.

### Analysis

**Late application to cancel notice to end** – Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the tenant on why he did not apply within the

prescribed timeframes are not supported by any documentary evidence and the reason does not constitute exceptional circumstance. I find that I cannot accept his late application to cancel the notice to end tenancy.

**Notice to End the Tenancy** - Verbal testimony supports that the tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent on March 3, 2009 at 11:03 p.m. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay his rent within five days and did not apply to dispute the Notice to End Tenancy within five days and is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, pursuant to section 46(5) of the *Residential Tenancy Act*.

The landlord has requested to end the tenancy as soon as possible but because the tenant has paid April's rent in full, the landlord has agreed to end the tenancy on April 30, 2009.

Based on the foregoing I find in favor of the landlord's request for an Order of Possession effective April 30, 2009.

Both parties were in agreement to schedule the move out inspection on April 30, 2009 at 1:00 p.m.

The landlord acknowledged that the tenant has advised her that he has lost some money in the laundry machine and has agreed to reimburse the tenant the amount that she was previously told.

As the tenant was not primarily successful in his application, I find that I cannot approve his request to recover the filing fee.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **April 30, 2009**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND that the parties came to an agreement to meet on April 30, 2009 at 1:00 p.m. to conduct a move out inspection.

I HEREBY FIND that the parties came to an agreement that the landlord will reimburse the tenant for \$4.00, the amount of money that the tenant had lost in the laundry machine for which the landlord was notified.

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 21, 2009.

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Dispute Resolution Officer