

DECISION AND REASONS

Dispute Codes:

CNC and FF

Introduction

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The tenant testified that they gave the landlord a Notice to End Tenancy for the end of May, 2009. During the hearing the parties agreed that the landlord then issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 4, 2009, which includes an unpaid amount of utilities in the sum of \$1,900.26.

The parties agreed that this amount claimed by the landlord was related to a flooding incident which occurred in 2007 and I determined that this has no relation to unpaid utilities or rent. As the tenants have moved out of the rental unit, cancellation of this Notice to End Tenancy is no longer required. However, I find that a 10 Day Notice to End Tenancy issued for amounts unpaid that are not rent or utilities is unenforceable and of no effect.

Conclusion

The tenants moved out of the rental unit and no longer request the 10 Day Notice to End Tenancy be cancelled. The Notice issued to the tenants is of no force or effect as the landlord is claiming unpaid damages rather than rent or utilities.

As the landlord has issued a 10 Day Notice to End Tenancy which is of no force or effect and may have resulted in the tenants moving prior to the date for which they gave notice I find that the tenant's application has merit and that the tenants are entitled to filing fee costs. I grant the tenants an order under section 67 for filing fee costs of \$50.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated June 11, 2009.

Dispute Resolution Officer