

## **DECISION**

### **Dispute Codes:**

CNR, FF

### **Introduction**

This is the Tenant's application to cancel a Notice to End Tenancy for unpaid rent and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Should the Notice to End Tenancy issued August 6, 2009, be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Background and Evidence**

This tenancy began on December 15, 2007. On April 29, 2009, the parties participated in a Dispute Resolution Hearing. At that Hearing, the Dispute Resolution Officer awarded the Landlord an Order of Possession and a Monetary Order in the amount of \$3,919.79. Pursuant to Section 72(2)(b) of the Act, the Dispute Resolution Officer ordered that the Landlord retain the security deposit and interest in partial satisfaction of the Landlord's claim. At the time of the Hearing, the rent was \$1,300.00 per month, with an additional \$65.00 per month for parking.

Subsequent to the April 29, 2009, Hearing, the Landlord and the Tenant came to an agreement whereby the Landlord reinstated the tenancy. The Tenant also became an employee of the Landlord. The parties agreed that the Tenant would pay \$500.00 per month until the debt was paid, and that until such time as the debt was paid, the Tenant would not pay any rent. The Tenant would still have to pay \$65.00 per month for parking. After the Tenant's debt was paid in full, the parties agreed that, while the Tenant was in the Landlord's employ, she would pay \$265.00 per month for rent and parking instead of \$1,365.00.

The Landlord fired the Tenant on August 6, 2009. The Tenant submitted that the Landlord did not have just cause to fire her and that the matter was before the

Employment Standards Branch. The Tenant's position is that, until the decision of the Employment Standards Branch is determined, the agreement between the parties stands.

The Landlord submitted that the Tenant owes the Landlord the amount of \$4,706.00 as at August 24, 2009. The Tenant submitted that she owes the Landlord \$1,229.79 on the original debt and owes no rent to the Landlord whatsoever.

### **Analysis**

The Landlord and the Tenant co-mingled a tenancy agreement with a contract for services. The tenant was an employee of the Landlord. The rental unit was provided to the Tenant at a reduced rent for the term of her employment. The Landlord issued a Notice to End Tenancy for Unpaid Rent under Section 46 of the Act. In this particular set of circumstances, I find that the Notice was issued under the wrong Section of the Act. The Notice to End Tenancy is therefore cancelled and the tenancy remains in full force and effect.

The Tenant has been successful in her application and is entitled to recover the cost of the filing fee in the amount of \$50.00 from the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord.

### **Conclusion**

The Notice to End Tenancy issued August 6, 2009, is cancelled. The tenancy remains in full force and effect.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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: October 5, 2009.

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