



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Unpaid Rent, for compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

The Landlord said that the tenancy started in 2003. In April, 2009 rent was increased from \$944.00 per month to \$979.00 per month.

The Landlord claimed that the Tenants had rent arrears of \$102.00 and as a result, she served them in October 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent. Neither Party provided a copy of the 10 Day Notice as evidence at the hearing. The Landlord did provide a copy of a statement of account that shows that \$50.00 of the alleged arrears is for late fees which are not included in the definition of "rent" under s. 1 of the Act.

Analysis

Section 46(3) of the Act says that in order to be enforceable, a Notice to End Tenancy must comply with s. 52 of the Act. Section 52 of the Act says that a Notice to End Tenancy when given by the Landlord must include the listed information and be in the approved form.

The Tenants did not attend the hearing and I find that there is some evidence that there are arrears of rent that would have warranted upholding a Notice to End Tenancy for Unpaid Rent. Had that been the case, the Landlord would have been entitled under s. 55 of the Act to request an Order of Possession at the hearing. However, in the



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absence of the 10 Day Notice in question, I cannot determine if the Tenants were served with a Notice that complies with s. 52 of the Act and as a result, I cannot conclude that the Notice should be upheld.

The Landlord may reserve the Tenants with a new 10 Day Notice showing the correct amount of rent arrears and if the Tenants fail to pay that amount within 5 days of receiving the Notice, the tenancy will be deemed under s. 46(5) of the Act to end on the effective date of the Notice which is 10 days after the Tenants receive it. In the absence of any evidence from the Tenants in support of their application, it is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply. 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: November 25, 2009.

Dispute Resolution Officer