

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.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Notice to End Tenancy issued October 2, 2009 a valid Notice to End Tenancy?

Background and Evidence

The Tenant testified that she is not in arrears for rent, and paid her rent on time in October, contrary to the Notice to End Tenancy. The Tenant testified that the Landlord issued a receipt for October's rent, indicating that October's rent of \$1,000.00 was paid on October 1, 2009. The Tenant provided a copy of the receipt in evidence.

The Tenant testified that she was not provided with page two of the Notice to End Tenancy, and has not received copies of any evidence provided to the case file by the Landlord. The Landlord's agent testified that they provided the Tenant with both pages of the Notice on October 21, 2009, by posting the Notice on the Tenant's door.

The Landlord's agents testified that the Tenant is in arrears of rent because she has failed to pay late fees for the months of November and December, 2008, in the total amount of \$50.00.

The Tenant testified that she was unaware of any alleged arrears until she was provided with the first page of the Notice to End Tenancy. The Landlord's agent AM testified that

she was not working for the Landlord when the Tenant incurred the late charges, and therefore could not say whether or not the Tenant was advised about the charges prior to receiving the Notice to End Tenancy.

The Tenant testified that the Landlord's agent is the 6th Manager she has had since she moved into the rental unit in May of 2006. The Tenant testified that she had to drop off her rent cheques at a building other than the rental property, and that sometimes there was no one there, so she left her cheques in the office. The Tenant was concerned that she may have been charged late fees when she had actually deposited her cheque at the office, but it was not discovered until the next day. The Landlord's agent testified that the tenancy agreement requires the Tenant to provide the Landlord with post dated cheques, but that she has failed to do so.

Analysis

The Residential Tenancy Act specifically excludes late fees in the definition of "rent". The Notice to End Tenancy for Unpaid Rent is therefore cancelled and the tenancy remains in full force and effect.

With respect to the Landlord's assertion that post-dated cheques are required under the tenancy agreement, the copy of the tenancy agreement provided by the Landlord is for a different tenant. In any event, the Tenant agreed to provide the Landlord with a series of post-dated cheques.

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

Conclusion

The Tenant's application is granted. The Notice to End Tenancy issued on October 2, 2009 is cancelled and 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: December 3, 2009