



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Notice to End Tenancy issued October 28, 2009 a valid Notice?
- (2) Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

At a previous Hearing, on September 24, 2009, the Tenant sought to cancel a Notice to End Tenancy for Unpaid Rent issued August 6, 2009. The Decision arising from that Hearing was that the Notice was issued under the wrong section of the Act, as the Tenant was an employee of the Landlord and was paying a reduced rent for the term of her employment. The Landlord had fired the Tenant on August 6, 2009, and therefore the Notice should have been issued under Section 48 of the Act.

The Landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent on October 29, 2009. The Notice alleges unpaid rent in the amount of \$5,456.00, due on October 1, 2009. At the bottom of the Notice, the Landlord wrote "Under Section 48 of the Act".

Analysis

Section 52 of the Act provides that a Notice to End Tenancy, when given by a landlord, must be in the approved form. A Notice issued under Section 46 of the Act (relating to Notices for unpaid rent) ends the tenancy 10 days after the date the tenant receives the Notice. The tenant has 5 days to pay the rent or dispute such a Notice. A Notice issued under Section 48 of the Act (relating to end of employment with the landlord) ends the tenancy the day before the date the rent is payable under the tenancy agreement and must be effective no earlier than one month after the date the tenant receives the notice and no earlier than the last day the tenant is employed by the landlord. The tenant has 10 days to dispute such a Notice.

In this case, the Landlord provided the Tenant with an invalid Notice to end the tenancy under Section 48. Section 48 requires the Landlord to serve a One Month Notice.

Essentially, the Landlord has issued the wrong form again.

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 October 29, 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: December 9, 2009.
