



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, CNR, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary order for money owed or compensation for loss or damage under the Act, and to recover the filing fee for this application.

The tenant served the landlord by registered mail with a copy of the application and a Notice of the Hearing and the landlord confirms receipt of the hearing documentation

The landlord and tenant appeared and the tenant was assisted by his advocate and support by a friend. Both parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

The tenant made is application under the *Residential Tenancy Act (Act)*, however it was determined with the Parties that the application falls under the *Manufactured Home Park Tenancy Act*. The Parties concerned did not voice any objections and I have amended the tenants' application for the correct *Act* and have made my decision based on the *Manufactured Home Park Tenancy Act*.

Issues(s) to be Decided

- Can the Notice to End tenancy for landlords' use of the property be cancelled?

- Can the Notice to End tenancy for unpaid rent be cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started 10 years ago. There was a verbal agreement in place and the tenant paid a monthly pad rent of \$250.00 plus an additional \$25.00 for a satellite service. Rent was due on the 1st of each month.

The landlord testifies that she gave the tenant a Two Month Notice to End Tenancy on July 18, 2010. The landlord claims she did not put a reason on the Notice but told the tenant it was time for him to move on.

The Notice that has been presented in evidence has been one reason ticked on it which states the tenant no longer qualifies for the subsidized rental unit. Neither Party states that they ticked this section of the Notice.

The landlord states the tenant did not pay rent for August, 2010. The landlord states she gave the tenant a 10 Day Notice to End tenancy. The landlord states she gave the tenant a receipt for rent dated August 03, 2010 in good faith that he would be paying his rent to her. The landlord also gave the tenant other typed Notices to end tenancy but accepts that these were not legal Notices.

The landlord seeks an Order of Possession for unpaid rent.

The tenant states he received the landlords Two Month Notice and disputed this as the reason given on it was not valid as he does not receive subsidized rent. The tenant disputes the 10 Day Notice as he claims he did pay his rent to the landlord in cash and

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she gave him the receipt for this dated August 03, 2010. The tenant states he would like both the Notices set aside as they are invalid. He also states that he has now given the landlord Notice to End his tenancy and will move from the landlords' property at the end of September, 2010.

The tenant seeks to recover his \$50.00 filing fee from the landlord for the cost of his application.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In order for a two Month Notice to be valid the landlord must give the tenant a valid reason to end the tenancy. In this case the landlord states she did not tick any of the reasons on the Notice and the tenant states the Notice was given to him with the rent subsidy box ticked. There is no provision under the *Manufactured Home Park Tenancy Act* for a landlord to give the tenant a two Month Notice to End Tenancy as he no longer qualifies for subsidized housing. Whether or not the landlord ticked the box I find she has given no valid reason to end the tenancy. Consequently the Two Month Notice to End Tenancy has been cancelled.

With regard to the 10 Day Notice to End Tenancy; in this matter, the landlord has the burden of proof and must show that the tenant failed to pay rent for August, 2010 of \$250.00. The tenant has provided a receipt signed by the landlord to show that rent was paid for this month. In light of the evidence I find the landlords testimony unreliable and the 10 Day Notice to End Tenancy is also cancelled.



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As the tenant has been successful with his application to cancel both Notices I find he is entitled to recover his \$50.00 filing fee from the landlord pursuant to section 65(1) of the Act.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy dated July 18, 2010, and the 10 Day Notice to End Tenancy dated August 10, 2010 are both cancelled and the tenancy will continue until the end of September, 2010 when the tenant has given Notice to end his tenancy.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: September 17, 2010.

Dispute Resolution Officer