

## **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.

Both parties appeared and gave affirmed testimony at the Hearing.

The Tenant testified that she delivered the Notice of Hearing documents to an agent of the Landlord at the Landlord's address, on October 6, 2010.

### **Issues to be Decided**

- Should the 10 Day Notice to End Tenancy issued September 1, 2010, be cancelled?

### **Background and Evidence**

The Landlord's agents provided the following testimony:

The Landlord inherited this tenancy from the Tenant's previous Landlord in February, 2009. The previous Landlord did not provide the Landlord with a copy of the tenancy agreement.

The current Landlord employed a different agent prior to the Landlord's agents taking over.

The Landlord's agent GK testified that he mailed the Tenant the 10 Day Notice to End Tenancy issued September 1, 2010, on September 28, 2010, by registered mail. The Landlord's agent provided the tracking number for the registered mail.

The Landlord's agent GK testified that monthly rent is \$723.00. At the beginning of the tenancy rent was due on the 15<sup>th</sup> of each month. At some point later in the tenancy, the rent was due on the 4<sup>th</sup> of the month. The Landlord's agent stated that the parties agreed, effective September 1, 2010, the rent would be due on the 1<sup>st</sup> day of each month.

The Landlord's agent HF testified that the Notice indicates unpaid rent in the amount of \$3,268.00, which is an accumulated balance, however the Tenant has paid rent for the month of August, 2010, and therefore the amount owing on the Notice should indicate \$2,545.00, calculated as follows:

Unpaid rent for December, 2008	\$723.00
Unpaid rent for August, 2009	\$723.00
Unpaid rent for December, 2009	\$373.00
(Tenant paid partial rent of \$350.00 on November 29)	
Unpaid rent for April, 2010	\$723.00

The Landlord's agent HF testified that the Tenant had provided the previous agent of the Landlord with her rent cheque for April, 2010, which was recently discovered, uncashed.

The Landlord's agent GK testified that the Tenant owes \$1,822.00 in unpaid rent.

The Landlord's agents testified that they had met with the Tenant in an attempt to reconcile the outstanding rent that may be owed, but that the Tenant had not provided proof that she had paid rent in December, 2008 and August, 2009. Rent for September, October and November, 2010, has been paid by the Tenant.

The Landlord's agents testified that they faxed a copy of their ledger to the Residential Tenancy Branch a couple of days ago.

The Tenant provided the following testimony:

The Tenant testified that all of the rent has been paid.

The Tenant acknowledged that she had agreed with the Landlord's agents to pay her rent on the first day of each month. The Tenant stated that she has signed an authorization for the rent to be paid to the Landlord directly from her bank account, on the first day of each month.

### **Analysis**

The evidence referred to by the Landlord's agents (copies of their ledger) is late evidence and is not on the case file. Both parties must provide the other party and the Residential Tenancy Branch with copies of their evidence at the earliest possible opportunity, and in any event at least 5 clear days before the date of the Hearing. Therefore, this evidence will not be considered.

The Tenants have applied to cancel a Notice to End Tenancy for Unpaid Rent. The Tenant testified that she has paid all rents due under the tenancy. The amount allegedly owed by the Tenants for August, 2008 rent is for a period when the former landlord was the Tenants' landlord. The current Landlord has not proven that it is owed. The Tenant paid rent in April, 2010, but the Landlord's previous agent neglected to deposit the cheque. The Landlord's agents met with the Tenant to try to reconcile the Landlord's ledger, and asked the Tenant to prove that she had paid rent as far back as August, 2009. It is clear that the Landlord's bookkeeping was inadequate. Furthermore, neither of the differing amounts that the Landlord's agents separately

claim are owed by the Tenants is supported by their calculations (i.e.  $\$723.00 + \$723.00 + \$373.00 + \$723.00 = \$2,542.00$ , not  $\$2,545.00$ , and  $\$723.00 + \$723.00 + \$373.00 = \$1,819.00$ , not  $\$1,822.00$ ).

The Landlord seeks to end the tenancy for unpaid rent. I find that the Landlord has not provided sufficient evidence that the Tenants owe any outstanding rent. The Tenants' application is granted. The Notice to End Tenancy is cancelled.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct \$50.00 from future rent due to the Landlord.

### **Conclusion**

The Tenant's application is granted. The Notice to End Tenancy issued September 1, 2010 is cancelled and the tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants 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: November 04, 2010.

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