

## **Decision**

**Dispute Codes:** CNR, FF

### **Introduction**

This hearing was convened in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to the above under the Act

### **Background and Evidence**

A previous hearing was convened on January 4, 2010 in response to a similar application by the tenant. The tenant did not appear, and in response to the landlord's oral request made during the hearing, an order of possession was issued in favour of the landlord.

Subsequently, in response to the tenant's application for review on the basis that she was unable to attend the hearing for reasons that could not be anticipated and that were beyond her control, by way of decision dated January 15, 2010, the above decision and order dated January 4, 2010 were suspended, pending a rescheduling of the hearing.

A hearing was then rescheduled on February 26, 2010, and a decision was issued on March 1, 2010. In the decision the dispute resolution officer recorded the following settlement reached by the parties:

1. The landlord will withdraw the 10 Day Notice to End Tenancy for Unpaid Rent;
2. The tenant will continue to pay from the date of this decision forward;

3. The tenant, with her agent, and landlord will meet to try to resolve the outstanding rent owed and if resolved the landlord will cancel the hearing scheduled in June 2010; and
4. The tenant will ensure that she files her application for rent subsidization within the required time frame.

Thereafter, a hearing was scheduled on October 21, 2010 in response, once again, to the tenant's application for cancellation of the landlord's 10 day notice to end tenancy for unpaid rent. However, the landlord did not appear at that hearing and the notice to end tenancy was set aside.

The present hearing was scheduled in response to the tenant's application to have the 10 day notice to end tenancy dated November 30, 2010 set aside. The tenant appeared and an agent representing the landlord appeared. Further to being upset about the notice to end tenancy, the tenant was also distressed about her mother's failing health. In this regard, the tenant indicated that she may very shortly be attending her mother in Europe. The tenant was not assisted at the hearing by an advocate.

The agent representing the landlord acknowledged that she had not been intimately involved in the particulars of the tenant's allegedly overdue rent, and that "SR," the agent more directly involved, is currently absent on vacation. In short, neither party was able to speak clearly about the outcome of earlier efforts that were supposedly made to address any confusion about the status of rent and to resolve the dispute.

The tenant stated that she has not met in person with "SR." At the hearing, the landlord's agent "SH" confirmed that she would undertake to facilitate the scheduling of a face-to-face meeting between "SR," as well as the tenant and the tenant's advocate. Should the parties be unable to resolve the dispute at that meeting, the landlord has the option of issuing another 10 day notice to end tenancy for unpaid rent, and both parties have the option of filing related applications for dispute resolution.

## **Analysis**

The landlord has the burden of proof to establish sufficient grounds to end a tenancy based on the notice to end tenancy. In the absence of sufficient evidence to confirm the manner in which the amount of any unpaid rent has been calculated, and in the absence of sufficient evidence pertaining to the status of the tenant's rent subsidy, I hereby set aside the notice to end tenancy dated November 30, 2010. The tenancy therefore presently continues in full force and effect.

In view of the outcome above, I order that the tenant may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

In the event of yet another hearing in this matter, the parties are encouraged to submit to the Residential Tenancy Branch and to each other, a full and extensive documentary accounting in support of their respective positions.

## **Conclusion**

The landlord's notice to end tenancy dated November 30, 2010 is hereby set aside, and the tenancy continues uninterrupted.

As the tenant has succeeded in having the notice set aside, I hereby order that the tenant may recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly rent.

DATE: December 30, 2010

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Dispute Resolution Officer