



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, CNC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* for Orders as follows:

1. To set aside a Notice to End tenancy for Unpaid Rent issued January 05, 2011- Section 47;

The tenant also applied to dispute the landlord's demand for a \$100 *late payment of rent fee*, verbally requested by the landlord.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. By the end of the 15 minute conference call hearing, the landlord had not made an appearance into the hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to collect a late fee of \$100.

Background and Evidence

The undisputed testimony of the tenant in this matter is that the rent payable per month is \$1080. The tenant paid partial rent of \$1000 on January 01, 2011. The tenant was given a 10 Day Notice to End Tenancy for Unpaid Rent on January 05, 2011 for rent

arrears of \$80. The tenant paid the \$80 on January 06, 2011, in cash, but for which she did not receive a receipt, and also had not received a receipt for the previous amount paid. Subsequently, the landlord has been verbally demanding a *late payment of rent fee* in the amount of \$100. The tenant testified that there is no provision in the tenancy agreement for a late fee. The tenant did not provide the Notice to End.

Analysis

Based on the tenant's testimony I find that the tenant was served with a Notice to End tenancy for non-payment of rent and I find the notice was issued validly. However, the tenant paid the demanded rent within 5 days of receiving the Notice to End, rendering the Notice to End dated January 05, 2011 null and of no effect. As a result, the landlord's Notice to end for Unpaid Rent **is set aside and cancelled**, and the tenancy continues.

Given that the landlord has not served the tenant with a formal written demand for the late fee, I find there is no basis upon which I can make a determination on this item in this application, as the landlord's verbal demand for the late fee is not legally sufficient demand. Should the tenant receive this demand in writing, the tenant may have cause to file for dispute resolution. Therefore, this item is dismissed with leave to reapply.

Conclusion

The landlord's Notice to End dated January 05, 2011 **is set aside and is of no effect**.

The balance of the tenant's application **is dismissed** with leave to reapply.

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*.
