



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a Notice to End Tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 19, 2011. Mail receipt numbers were provided in the Tenants' evidence. The landlord is deemed to be served the hearing documents on February 24, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite her being served notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Was the 1 Month Notice to End Tenancy issued and served in accordance with the *Act*?
2. If so, has the Landlord met the burden of proof to end this tenancy in accordance with the 1 Month Notice?

Background and Evidence

The Tenant testified they entered into a written tenancy agreement for a month to month tenancy effective on approximately May 15, 2005. Rent is payable on the first of each month in the amount of \$900.00 and the Tenants paid a security deposit of \$450.00.

The Tenant stated they have only ever been late paying their rent once and that was for February 1, 2011's rent. She advised they were late because her husband lost his job and they were waiting for his employment insurance benefits to kick in.

The Landlord served them with the 1 Month Notice to End Tenancy for repeated late payment of rent by leaving the Notice in their mailbox on February 9, 2011. They paid their rent in full on February 11, 2011.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant.

I accept the Tenant's testimony that they have only been late paying their rent once and that was February 2011's rent. Based on the aforementioned, and in the absence of evidence from the Landlord, I find there to be insufficient evidence to support the issuance of the 1 Month Notice to End Tenancy for cause dated February 9, 2011. Therefore the Notice is cancelled.

The Tenants have been successful with their application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The 1 Month Notice to End Tenancy issued February 9, 2011, is HEREBY CANCELLED and is of no force or effect.

The Tenants may deduct the one time award of **\$50.00** from their next rent payment as full compensation for the recovery of the filing fee.

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: March 16, 2011.

Residential Tenancy Branch