

DECISION

Dispute Codes: CNR and FF

Introduction

By application of May 6, 2011, the tenant seeks to have set aside a Notice to End Tenancy for unpaid rent served in person on May 6, 2011 on the tenant's partner.

Issues to be Decided

The application requires a decision on whether the Notice to End Tenancy for unpaid rent should be set aside or upheld.

Background and Evidence

During the hearing, the landlord gave evidence that when she served the tenant's partner, he advised her that the rent had been paid via direct deposit. She replied that in that case, he and the tenant should ignore the notice.

The landlord concurred that the rent had, in fact, been paid. The tenant stated she had filed to dispute the notice simply to gain assurance that the tenancy was protected. However, she said that she proceeded with the hearing to recover her filing fee.

Analysis

Section 46(4) of the *Act* provides that a Notice to End Tenancy for unpaid rent is of no effect if the rent is paid within five days of receipt of the notice. The notice itself advises tenants that having received it, they have five days, to pay the rent.

Taken together with the landlord's advice to the tenant's partner that, if the rent had already been paid, they should ignore the notice, I find that it was not necessary for the

tenant to make application before having verified with the landlord that she was in receipt of the payment.

Therefore, the application is dismissed without leave to reapply and I find that the tenant should remain responsible for her own filing fee.

Conclusion

The Notice to End Tenancy of May 5, 2011 is of no effect by virtue of the fact that the rent had been paid at the time of service.

As the application was not necessary, the tenant remains responsible for the filing fee.

The application is dismissed without leave to reapply..

June 1, 2011