



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

At the hearing the Landlord withdrew her application for an Order of Possession, as the Tenant vacated the rental unit sometime after June 02, 2011. She stated that the Notice to End Tenancy for Cause that was served to the Tenant required the Tenant to vacate the rental unit by May 31, 2011.

The Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the female Tenant on May 26, 2011. She stated that she left a second copy of these documents with the female Tenant in an effort to serve the male Tenant.

In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however she did not appear at the hearing.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Act*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;

(d) by sending a copy by registered mail to a forwarding address provided by the tenant; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the male Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the male Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the male Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the male Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served to him pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The Landlord was advised that the male Tenant had not been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order. The Landlord was provided with the opportunity to either withdraw the application for a monetary Order or to proceed with the application for a monetary Order, with the understanding that the male Tenant would not be named on the monetary Order, due to the fact the male Tenant had not been properly served with the Application for Dispute Resolution and the Notice of Hearing. The Landlord elected to amend the Application for Dispute Resolution by removing the name of the male Tenant.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for late fees and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on June 14, 2010; that the Tenant was required to pay rent of \$650.00 on the first day of each month; and that the parties had a written tenancy agreement, a copy of which was submitted in evidence. The tenancy

agreement stipulates that a “late payment penalty of \$50.00 may be charged at the discretion of the Landlord”.

The Landlord stated that the Tenant did not pay rent on time in January, February, March, April, or May of 2011, and she is seeking compensation in the amount of \$125.00.

Analysis

Section 7(1)(d) of the *Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

This tenancy agreement provides for a \$50.00 late fee, which is not authorized by the *Regulation*. I find that condition of the tenancy agreement regarding late fees does not comply with the legislation, and therefore I dismiss the Landlord’s application for a monetary Order for late payment of fees. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a late payment fee of \$25.00.

Conclusion

I find that the Landlord has failed to establish that her Application for Dispute Resolution has merit and I therefore dismiss her application to recover the cost of filing this Application for Dispute Resolution. In reaching this conclusion, I was heavily influenced by the fact that the Landlord has not established that she is entitled to monetary compensation. In reaching this conclusion, I was further influenced by the fact that the Landlord filed this Application for Dispute Resolution before the effective date of the Notice to End Tenancy for Cause, so the Landlord could not have reasonably known that the Tenant would not be vacating in accordance with the Notice to End Tenancy. In reaching this conclusion, I was further influenced by the fact that the Tenant vacated the rental unit on their own accord and the Landlord did not require an Order of Possession.

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: June 16, 2011.

Residential Tenancy Branch