



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to End Tenancy for unpaid rent, to obtain an Order to have the Landlord comply with the Act, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the 10 Day Notice to End Tenancy been issued in accordance with the *Residential Tenancy Act*?
2. If so, has the Tenant met the burden of proof to have the Notice set aside?
3. Has the Tenant met the burden of proof to obtain an Order to have the Landlord comply with the Act?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement that began for this unit near the end of August 2010. Rent is due monthly on the 15th of each month in the amount of \$1,200.00 and no security deposit was required to be paid.

The Landlord testified that on May 13, 2011 he received an e-mail from the Tenant advising he was out of town and would not be returning until Tuesday evening, May 17, 2011. The Tenant added that because rent was required to be paid in cash he would pay the Landlord the rent on Wednesday May 18th upon his return.

When rent was not received by 5:30 p.m. on May 18th the Landlord stated he called the Tenant who said he was not at home. Then at approximately 7:30 p.m. the Landlord received a call from the Tenant advising he was at home so the Landlord went to pick up the rent. The Tenant handed him only \$1,100.00 and stated that he had deducted \$50.00 he was awarded in a previous dispute and another \$50.00 he was awarded in the dispute that occurred that day for which the Landlord did not attend.

The Landlord confirmed the Tenant was awarded the first \$50.00 but that he had not been informed the Tenant was awarded the second \$50.00. On May 20, 2011 he issued the Tenant a 10 Day Notice for unpaid rent of \$50.00 and posted it to the Tenant's door. On approximately May 23, 2011 the Landlord received the written decision from the May 18, 2011 dispute resolution hearing and confirmed the Tenant was awarded the \$50.00 filing fee.

The Tenant confirmed the 10 Day Notice was posted to his door. He also confirmed he deducted the \$50.00 filing fee from his rent on May 18, 2011 prior to the written decision being received as the hearing only took place on May 18, 2011. He stated that the Dispute Resolution Officer told him during the hearing that he was being awarded the filing fee.

The Tenant stated that he wants the Landlord ordered to stop issuing him these notices and to have him comply with the Act.

The Landlord requested that the Tenant not be awarded the filing fee in this case as he acted within his right to issue the Notice.

Analysis

I have carefully considered the aforementioned testimony and have determined that the 10 Day Notice to End Tenancy that was issued May 20, 2011 was issued and served in accordance with the *Residential Tenancy Act*.

The evidence supports the Tenant deducted a monetary award from his rent prior to the binding decision being issued and received by both parties. Therefore I find the Landlord acted in accordance with the Act. Having said that, the 10 Day Notice is now void as the parties have since received the binding written decision, within the five day time limitation set by the 10 Day Notice, which confirms the rent has now been paid in full.

Having found the Landlord Act within the requirements of the *Residential Tenancy Act*, I dismiss the Tenant's application, without leave to reapply.

The Tenant has not been successful with his application therefore he must bear the burden of the cost of making his application.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The 10 Day Notice to End Tenancy issued May 20, 2011, is Void and of no force or effect, as payment was deemed to be received in full once the binding decision was received by both parties on approximately May 23, 2011.

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