

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants agreed that they were handed the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 28, 2011. The landlords confirmed that they were handed a copy of the tenants' dispute resolution hearing package on August 31, 2011. I am satisfied that these documents were provided to one another in accordance with the *Act*.

Issues(s) to be Decided

Should the tenants' application to cancel the 10 Day Notice be allowed? Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

This periodic tenancy commenced on July 1, 2010. Monthly rent is set at \$1,055.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$517.50 security deposit paid by the tenants on July 1, 2006, when they commenced another tenancy on this rental property.

Although the landlords did not enter a copy of the 10 Day Notice into written evidence, they said that no payments have been made by the tenants since July 2011. The landlords said that there was \$4,566.00 in outstanding rent owing from this tenancy.

The tenants testified that they have had great difficulty obtaining receipts for their cash payments to a series of the landlord's agents who have been managing the rental property for the landlords. Tenant ER confirmed that the tenants have not paid rent for the remainder of August 2011 or September 2011, but that there was not outstanding rent prior to mid-August 2011.

The only written evidence provided by either of these parties was the landlord's three-page document, the substance of which was a two-page Tenant Ledger, received by

the Residential Tenancy Branch the day before this hearing. This Tenant Ledger signed by an agent for the landlord who did not participate in the hearing stated that the agent had reviewed all receipts presented by the tenants and incorporated them into the Tenant Ledger. The tenants testified that they had been requesting an accurate breakdown of the landlord's claim that there was unpaid rent for some time and only received this Tenant Ledger less than 48 hours before this hearing.

Analysis

Although I accepted the landlord's late evidence, I advised the parties at the hearing that the circumstances of this tenancy were unclear to me based on the very limited material that was before me and the disagreement between the parties as to the accuracy of the landlord's payment records. The landlords did not enter into written evidence a copy of the 10 Day Notice. The landlords have not applied for dispute resolution themselves nor did they make an oral request at the hearing for an Order of Possession should the tenants' application for dispute resolution be dismissed.

The landlords said that they intended to issue another 10 Day Notice and submit their own application for dispute resolution seeking a monetary Order.

With insufficient information before me regarding this tenancy, I find that the landlord's have not demonstrated that they are entitled to end this tenancy on the basis of the 10 Day Notice that was not entered into evidence for this hearing. I allow the tenants' application to cancel the 10 Day Notice.

Since the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee from the landlord. I allow the tenants to deduct \$50.00 from their next monthly rent payment.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice issued to the tenants on August 28, 2011. This tenancy continues.

I allow the tenants to deduct \$50.00 from their next monthly rent payment to recover their filing fee for their application for dispute resolution.

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*.