



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on December 1st, 2011. The rent is \$1050.00 per month.

The landlord testified that the tenants plugged up the toilet, which cost the landlord \$50.00 to repair. The landlord said that the tenants refuse to pay and that she served the tenants a 10 Day Notice for Unpaid Utilities.

Analysis

A utility in the residential context consists of a service provided for the public, in this case tenants, such as water, gas, electricity, or garbage removal. A toilet does not fall within the definition of a utility and in that context the landlord's use of a 10 Day Notice to End Tenancy for failing to pay a related repair is not appropriate. A remedy for the landlord seeking compensation would be to seek assistance through dispute resolution if the parties cannot resolve the issue. As such I find that the landlord did not establish the grounds to issue the notice to end tenancy.

Conclusion

The landlord's 10 Day Notice to End Tenancy is set aside and the tenancy will continue. Since the tenants were successful, they are entitled to recover the filing. Accordingly I authorize the tenants to deduct \$50.00 from the next rental payment.

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: January 26, 2012.

Residential Tenancy Branch