



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking more time to dispute a 10 day Notice to End Tenancy for unpaid rent, for an order cancelling a 10 day Notice to End Tenancy for unpaid rent, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Agent for the Landlord testified he served the Tenant with the first 10 day Notice to End Tenancy on December 18, 2011, by posting it on the door. This method of service is deemed served three days after posting, or on December 21, 2011, in this instance. The Tenant filed her Application on December 23, 2011. Therefore, as the Tenant had five days from the date of service to file her Application and filed it on the second day following the deemed service date, she has filed her Application on time and no extension of time was necessary.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began on December 1, 2010, with the parties entering into a written tenancy agreement. The monthly rent was set at \$850.00. The tenancy agreement sets out that the Tenant must pay a late fee of \$25.00.

The Agent for the Landlord for the Landlord testified that the Tenant had not paid all the rent for November of 2011, and no rent for December of 2011.

The Agent testified he received \$300.00 in cash from the Tenant and \$80.00 in cash from the Tenant's daughter for November rent. He testified he is still holding onto these funds and has not deposited them to the credit of the Tenant's account. He further testified that he does not issue receipts for cash payments unless he is requested to do so.

The Agent testified he issued the 10 day Notice to End Tenancy on December 18, 2011, for a total of \$1,470.00, comprised of the balance of November rent, the December rent and a \$75.00 late fee. The Agent testified he was informed by the owners of the building to charge this late fee amount in October of 2011.

The Agent testified he issued a second 10 day Notice to End Tenancy to the Tenant on January 8, 2012, in the amount of \$950.00, which also included a \$75.00 late fee.

The Tenant testified that she had paid all the rent in November by placing the rent amount in cash, in an envelope and putting it through the mail slot of the Agent for the Landlord. She testified that no rent is due.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that both the 10 day Notices to End Tenancy are not valid and must be cancelled, for the following reasons.

A 10 day Notice to End Tenancy must set out the actual amount the Tenant is required to pay to the Landlord, within five days from the date it is served, in order to ensure the tenancy continues. The Agent testified he added late fees of \$75.00 to each of the Notices.

Under the tenancy agreement, Act and the regulations, the Landlord is allowed to charge the Tenant a late fee up to \$25.00. The Landlord has overcharged the Tenant

for the late fee and these extra funds must be accounted for. Furthermore, the Agent testified he is holding rent money paid by the Tenant which has not credited or posted to her account.

Based on the testimony of both parties, I find I am unable to make a finding of how much, if any, rent is owed to the Landlord. At the very least, a more thorough and accurate accounting of payments or shortfalls is required. Therefore, I order that both the 10 day Notices to End Tenancy are not valid and I order them cancelled.

Nevertheless, I caution the Tenant that rent must be paid when it is due and she must not withhold rent from the Landlord, even if there is a hearing pending, unless she has an Order from a Dispute Resolution Officer allowing her to withhold rent.

The Tenant is also cautioned that three instances of late payment of rent may provide the Landlord cause to issue a one month Notice to End Tenancy for repeated late payment of rent.

The Landlord is also cautioned that late fees must not exceed \$25.00.

Furthermore, the Landlord is cautioned that whether or not the Tenant requests it, the Act requires the Landlord or its Agent to issue a receipt to the Tenant for all rent payments made in cash.

As the Tenant has been successful in her Application, I order that she may recover the \$50.00 filing fee for the Application by reducing her rent for one month by \$50.00.

This decision is final and binding on the parties, except as otherwise provided for in the Act, and 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 17, 2012.

Residential Tenancy Branch