

DECISION

Dispute Codes:

CNR; FF

Introduction

This Hearing was convened to consider the Tenant's application to cancel a 10 day Notice to End Tenancy issued December 19, 2011, and to recover the cost of the filing fee from the Landlord.

The Landlord's agents and the Tenant gave affirmed testimony at the Hearing.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?

Background and Evidence

At the outset of the Hearing, the Landlord's agent JH testified that she served the Tenant with the Notice to End Tenancy by handing the document to the Tenant at the rental unit on December 19, 2011. She stated that the Tenant had paid the outstanding rent a day or two after the Notice to End Tenancy was issued. The Tenant agreed that she had paid the amount on the Notice to End Tenancy within 2 days of receiving the Notice.

Analysis

Based on the testimony of both parties, I find that the Tenant paid the amount noted on the Notice to End Tenancy within 5 days of receipt of the Notice. Therefore, pursuant to the provisions of Section 46(4)(a) of the Act, the Notice had no effect as of the date the payment was made. The Tenant's application was not necessary and therefore I find she is not entitled to recover the cost of the filing fee from the Landlord.

It is important to note that the Tenant stated that she wished to get a ruling on whether or not repairs that had been ordered had been completed. She stated that she had provided evidence to another file with respect to her claim that the repairs had not been completed. I explained to the Tenant that I would not amend her application to include that request because the Tenant had not amended her application in accordance with the Rules of Procedure and the Landlord was not prepared to proceed with that application today. The Tenant that is at liberty to file another application and I caution her that **if she chooses to file a subsequent application with respect to repairs, any evidence on which she will rely must be submitted to that file and to the**

Respondent Landlord in accordance with the time lines set out in Rule 3 of the Rules of Procedure.

Conclusion

The Notice to End Tenancy was of no effect when the Tenant paid the amount required, within 5 days of receipt of the Notice. The Tenant's application was not necessary, and therefore the Tenant is not entitled to recover the cost of the filing fee from the Landlord.

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 10, 2012.

Residential Tenancy Branch