



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 15, 2012, the landlord did not appear. The tenant testified that the mail was sent to the address listed on the Notice, provided the registered mail receipt and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the landlord's absence.

The tenant gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form.

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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice to End Tenancy and for recovery of the filing fee?

Background and Evidence

Although not submitted, the tenant testified that there was a written tenancy agreement, that the month to month tenancy started on April 1, 2011, monthly rent is \$775.00, and the tenant paid a security deposit of \$375.00 in mid March 2011.

The tenant stated the landlord posted the Notice, dated February 2, 2012, on her door. The Notice listed rent owed of \$400.00 and a late fee.

The tenant stated that after almost a year of paying the monthly rent in two instalments, she does not understand why the landlord issued the Notice.

The tenant submitted her husband's small military income is the only source of income for herself and her daughter as well for her husband's household, as he is away training. The tenant stated that her husband's \$1,000.00 per month income is paid in equal instalments on the 1st and 15th of the month, which is why she pays her rent in two instalments.

The tenant submitted that she pays at least one-half of the monthly rent on the 1st and the remaining on the 15th of the month, has never carried a balance to the next month, and has done so since the beginning of the tenancy.

Analysis

Based on the foregoing affirmed testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlord, who did not appear or submit evidence, the tenant's testimony will be the preferred evidence.

I accept the tenant's testimony that she has established a pattern of paying her monthly rent in two instalments each month and that this method has been acceptable to the landlord since the beginning of the tenancy.

As I have found that the landlord has allowed the instalment method of rent payments, I therefore allow the tenant's Application for Dispute Resolution, and **I order that the 10 Day Notice to End Tenancy issued by the landlord, dated February 2, 2012, is cancelled and is of no force or effect**, with the effect that this tenancy continues until it may legally end under the Act.

As the tenant was successful in her application seeking cancellation of the Notice, I award the tenant recovery of the filing fee. The tenant may deduct **\$50.00** from the next or a future month's rent payment in satisfaction of this award.

The tenant may use this Decision in support of her position should the landlord issue any future Notices to end the tenancy for unpaid rent.

Conclusion

The tenant is granted an order cancelling the 10 Day Notice to End Tenancy, dated February 2, 2012.

The tenant is awarded the filing fee of \$50.00, which she may deduct from the next or a future month's payment of rent.

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: March 02, 2012.

Residential Tenancy Branch