



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by personally on June 14, 2012 in accordance with Section 89.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for monies owed and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Background and Evidence

The tenant testified the tenancy began in September 2007 as a month to month tenancy for a current monthly rent of \$752.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated June 8, 2012 with an effective vacancy date of June 18, 2012 citing the tenant had failed to pay rent in the amount of \$32.33 due on June 1, 2012. The notice indicates the notice was posted on the tenant's door.

The tenant submitted that a previous hearing, held on June 26, 2012 found the landlord had failed to properly serve a notice of rent increase. The tenant submitted that he was never notified of a rent increase and paid his rent for June 2012 based on what is last rent was of \$752.00.

The tenant did submit a receipt from the landlord dated June 14, 2012 in the amount of \$32.33. The tenant seeks return of this amount and cancellation of the 10 Day Notice as he has paid all of his rent in full in addition to the additional \$32.33 noted in the 10 Day Notice.

Analysis

As there is no evidence before that the landlord has imposed a rent increase or why the landlord is asserting the tenant has failed to pay rent in the amount of \$32.33. I find, based on the tenant's undisputed testimony that the tenant did pay the landlord the additional \$32.33 on June 14, 2012.

I also find, based on the tenant's undisputed testimony that the landlord has not issued a notice of rent increase in accordance with the requirements under Section 41 of the *Act*.

For these reasons, I find the tenant is entitled to disregard the 10 Day Notice to end Tenancy for Unpaid Rent issued on June 8, 2012 and to reimbursement of the overpayment of rent in the amount of \$32.33.

In regard to the tenant's claim to recover the filing fee, I note that from the applicant's file there is a notation that the tenant was advised that he could have raised the issue of the June 10 Day Notice in the hearing that was conducted on June 26, 2012 regarding the May 10 Day Notice.

As such, I find the tenant made a choice to submit a new Application for something that could have been dealt with in the previous hearing and there was no need to pay an additional filing and I find the landlord should not be required to pay for the tenant's choice to complete a 2nd Application. I therefore dismiss the tenant's claim to recover the filing fee for this Application.

Conclusion

Based on the above, I find the tenancy remains in full force and effect.

I order the tenant may deduct from a future rent payment \$32.33 in accordance with Section 72(2)(a).

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: June 28, 2012.

Residential Tenancy Branch