



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord's agent and the tenants attended the hearing. The parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The tenants testified that they personally served the landlord's employee with the dispute resolution package on 6 November 2014. The landlord's agent confirmed receipt of the dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

At the hearing the tenants asked to amend their application to list the corporate landlord as the respondent. The landlord's agent wrote to the Residential Tenancy Branch requesting a similar amendment. I allowed this amendment.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

These tenants and this landlord were involved in a previous dispute before another arbitrator of the Residential Tenancy Branch.

On 20 October 2014, an arbitrator of the Residential Tenancy Branch issued a decision and order in the prior dispute between these parties. The decision set out in part:

I ordered the landlord(s) to pay the tenant the sum of \$700 plus the sum of \$50 in respect of the filing fee for a total of \$750. I further order that the monthly rent including the \$75 per month additional person charge is \$765 per month.

The order set out in part:

I ORDER that the respondent(s) pay to the applicant(s) the following amounts in satisfaction of this matter such sum may be deducted from future rent:

In respect of this claim:	\$ 700.00
In respect of the filing fee	<u>50.00</u>
TOTAL	\$ 750.00

The landlord agrees that the order that the tenants received from the director authorized them to deduct \$750.00 from their November's rent.

The tenants delivered rent of \$15.00 to the landlord for November's rent.

On 3 November 2014, the landlord served the tenants with the 10 Day Notice by posting it to the tenants' door. The tenants acknowledged that they received the 10 Day Notice.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to subsection 46(1) landlord may end a tenancy if rent is unpaid on any day after the day it is due.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

In this case the tenants had an order from the director that entitled them to deduct \$750.00 from their \$765.00 monthly rent. The tenants paid their November rent in full when they paid \$15.00 to the landlord. There was no unpaid rent as of 1 November 2014. As such, the 10 Day Notice is cancelled.

As the tenants have been successful in their application they are entitled to recover their \$50.00 filing fee from the landlord.

Conclusion

The tenants are granted a monetary order in the amount of \$50.00 to be deducted from their December rent. Rent for December is \$715.00. I orally confirmed this order with the tenants and the landlord's agent at the conclusion of the hearing. Both confirmed that they understood.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2014

Residential Tenancy Branch

