



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OLC FF

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and the landlord attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they had a copy of the 10 Day Notice dated June 1, 2015 before them during the hearing.

Preliminary and Procedural Matter

The tenant requested to withdraw her request to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided. As the tenant's request does not prejudice the landlord, the tenant was permitted to withdraw that portion of her application. Therefore, I have not considered this portion of the tenant's application as it was withdrawn.

Issues to be Decided

- Should the 10 Day Notice dated June 1, 2015 be cancelled?
- Is the tenant entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a 10 Day Notice dated June 1, 2015 was served on the tenant on June 1, 2015. The tenant applied to dispute the 10 Day Notice on June 3, 2015. The effective vacancy date listed on the 10 Day Notice was June 10, 2015, which would automatically correct to June 11, 2015 under the *Act*.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In the matter before me, the landlord dated and served the 10 Day Notice on June 1, 2015, the same day the rent is due. I find the earliest the landlord could have issued a 10 Day Notice for June 2015 unpaid rent was June 2, 2015. Therefore, **I cancel** the 10 Day Notice dated June 1, 2015 as the 10 Day Notice is an invalid notice under the *Act* and is of **no force or effect** given that the 10 Day Notice was dated and served prematurely on the tenant.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50** pursuant to sections 67 and 72 of the *Act*. **I ORDER** that the \$50 filing fee be deducted from the tenant's rent for a future month on a one-time basis in full satisfaction of the recovery of the tenant's filing fee.

Conclusion

The 10 Day Notice dated June 1, 2015 issued by the landlord has been cancelled and is of no force or effect. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant has been ordered to deduct \$50 from a future month's rent in full satisfaction of the recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under 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: July 17, 2015

Residential Tenancy Branch

