



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

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 a modified 10 Day Notice before them during the hearing.

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?
- Should the landlord be directed to comply with the Act, regulation or tenancy agreement?

Background and Evidence

A 10 Day Notice dated June 16, 2015 was served on the tenant which the tenant disputed on June 19, 2015, which is within the 5 day timeline provided for under section 46 of the Act. The tenant alleged that the landlord later modified the 10 Day Notice by changing both the date of the 10 Day Notice and the amount owing from \$7,500 to \$9,750 due "01 Jan 2010 through Jan 2012 as attached". The landlord confirmed that she had modified the original 10 Day Notice by writing "AMENDED" on the top of the modified 10 Day Notice.

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 – The *Act* does not provide for the ability to modify a 10 Day Notice once it has been served upon the tenant and disputed by the tenant, with the exception of effective vacancy dates, which are automatically corrected pursuant to section 53 of the *Act*. In the matter before me, the landlord served a 10 Day Notice dated June 16, 2015 and modified that 10 Day Notice on August 10, 2015, which was nine days before the scheduled dispute resolution hearing. The modifications were not related to the effective vacancy date pursuant to section 53 of the *Act*. I find that by modifying the original 10 Day Notice, the entire 10 Day Notice becomes invalid and unenforceable, including any amendments to the 10 Day Notice. The remedy for the landlord would have been to issue a new 10 Day Notice if the one she originally served was inaccurate or incorrect.

Given the above, **I cancel** the 10 Day Notice dated June 16, 2015 and modified on August 10, 2015 as the 10 Day Notice is an invalid notice under the *Act* and is of **no force or effect**.

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.

The landlord is cautioned not to modify a Notice to End Tenancy again in the manner described above in the future, once the Notice has been served. As described above, the remedy would be to serve a new Notice.

Conclusion

The 10 Day Notice dated June 16, 2015 and modified by the landlord on August 10, 2015 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 authorized to deduct \$50 from a future month's rent on a one-time basis in full satisfaction of the recovery of the cost 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: August 20, 2015

Residential Tenancy Branch

