



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), and to recover the filing fee.

Preliminary Issues

One of the Tenants appeared for the hearing and provided affirmed testimony during the hearing as well as a copy of the Notice. However, there was no appearance by the Landlords for the 10 minute duration of the hearing.

I noted that the Landlords had provided the Residential Tenancy Branch with a letter dated October 13, 2015 for this file which states that they have withdrawn the Notice issued to the Tenants because of a misunderstanding of how the Tenants were able to recover an award previously granted to them by a different Arbitrator. The Landlords write that they will not be participating in this hearing.

The Tenant explained that the Landlords were using the Notice to try and get them out of the rental unit and that she wanted to have the Notice cancelled as well as to recover the filing fee.

Analysis and Conclusion

The Tenant testified that she was served with the Notice dated September 11, 2015 when it was posted to her door by the Landlords on September 12, 2015. The Tenant explained that they had not paid rent for September 2015 because they had withheld it pursuant to an award provided to them at a previous hearing which was held on August 20, 2015 between the same parties.

Section 72(2) (a) of the Act allows a tenant to deduct an award from any rent due to the landlord. Therefore, I find that the Tenants had authority under the Act to withhold rent until the award was fully satisfied. As a result, I cancel the Notice issued to the Tenants dated September 11, 2015. The tenancy will continue until it is ended in accordance with the Act.

As the Tenants have been successful in cancelling the Notice, I find that the Tenants are entitled to the \$50.00 filing fee for the cost of having to make this Application. The Tenants are authorized to obtain this relief by deducting \$50.00 from their next or a future month's rent payment pursuant to Section 72(2) (a) of the Act. The Tenants may want to provide the Landlords with a copy of this decision in order to put them on notice of the reason for the reduced rent payment.

Conclusion

The Landlords failed to appear for the hearing to prove the Notice. The Tenants had authority under the Act to not pay rent. Therefore, the Notice is cancelled and the Tenants may deduct the filing fee from rent due to the Landlords.

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: October 20, 2015

Residential Tenancy Branch

