



# 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 MNDC OLC O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 9, 2017. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; Order the Landlord to comply with the *Act*, Regulation, or tenancy agreement; for other relief; and to recover the cost of the filing fee.

The application listed two female applicants. Upon review of the Tenancy agreement both parties confirmed that H.F. had never been added to that agreement. Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I then considered that Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant.

Based on the above, I found H.F. to be an occupant and not a tenant. Therefore she has no rights or obligations under the tenancy agreement. Accordingly, her name was removed from the style of cause as listed on the front page of this Decision, pursuant to section 64(3)(c) of the *Act*.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (the Landlords), the Tenant, and the Occupant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Each party acknowledged receipt of evidence from the other and no issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Although I was provided a considerable amount of evidence, including verbal testimony and written submissions, with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

#### Issue(s) to be Decided

1. Have the matters relating to the 10 Day Notice been resolved?
2. Have the parties agreed upon a manner in which the Tenant can pay her rent after business hours?
3. Is the Tenant entitled to recover the \$12.50 stop payment fee for her January 2017 cheque?
4. Should the January 2017 late payment charge be cancelled?
5. Is the Tenant entitled to recover the cost a notarized statement?

#### Background and Evidence

The Tenant entered into a fixed term tenancy agreement which commenced on September 1, 2015 and switched to a month to month tenancy after August 31, 2016. Rent, as per that agreement, began at \$1,275.00 payable on the first of each month and has subsequently increased to \$1,311.97 per month. On July 1, 2015 the Tenant paid \$637.50 as the security deposit.

Since September 1, 2015 the Tenant has paid her rent by depositing a personal cheque into the Landlord's office located in her rental building. In October 2015 a new owner acquired the rental property. Effective April 2016 a new company began managing the building.

On April 1, 2016 the new management company issued a memo advising the Tenant the rental office in her building was closed, without further notice. The Tenant was instructed to direct all questions or concerns to the Landlord's office at a different location.

The Tenant continued to pay her monthly rent by placing a personal cheque in the office in her building. On January 3, 2017 and January 4, 2017 she received 10 Day Notices for unpaid rent; despite having placed her personal cheque in the rental office in her building by January 1, 2017; as she had always done. I heard the Landlords stated the 10 Day Notices issued January 3 and 4<sup>th</sup>, 2017 were withdrawn as the Tenant had paid the January 2017 rent within the required five day period.

The Tenant submitted the Landlords are insisting she pay her rent by preauthorized payment (PAP) from her bank account and she wishes to continue to pay her rent by personal cheque. She stated the Landlords refused to go the building office to pick up her January 2017 cheque which resulted in her having to place a stop payment on that cheque at a \$12.50 cost to her.

The Tenant seeks to recover the \$12.50 stop payment fee; wants an order that the January 2017 rent will not be considered a late payment; and she wants the Landlord to reverse the late payment charge of \$25.00 that they are now trying to collect and have threatened to send her to collections or seek legal action.

The Tenant sought a resolution to how she could pay her rent without having to sign up for the PAP. She stated the Landlord's office is not open when she is off work so she had offered to provide the Landlord with postdated cheques but they refuse.

The Landlords confirmed their office is only open during regular business hours, Monday through Friday 9:00 a.m. to 5:30 p.m. They do not have a method to receive cheques after hours; their office is in a building behind a locked main door without an exterior mailbox for tenants from other buildings to deposit their rent payments; and they are not set up to hold postdated cheques.

The parties were given the opportunity to settle these matters during which they agreed upon a partial settlement which involved a method the Tenant could pay her rent. That agreement is outlined below.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The two 10 Day Notices to tenancy issued January 3, 2017 and January 4, 2017 have been cancelled. As such no further action is required relating to those Notices.

The parties **mutually agreed** on the following method upon which the Tenant could pay her rent:

- 1) Two weeks prior to when rent is due the Tenant will send the Landlord a postdated personal cheque via regular mail;
- 2) Upon receipt of the postdated cheque the Landlord's staff will call the Tenant to confirm they received her cheque;
- 3) If the Tenant does not receive a call from the Landlord's office she will call the Landlord's office one week before rent is due to verify if they have the

cheque; if they do not have the cheque the Tenant will make other arrangements to have her rent paid in full and on time.

When determining if the Tenant's January 2017 rent should be considered paid late and if she should be required to pay the late payment fee I concluded these matters constituted estoppel. Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency. I made this conclusion in part, as the Tenant has paid her rent on time and in the same fashion since the onset of her tenancy and prior to this management company taking over. She continued to do so even after the Notice of the office closure was posted in April 2016. I accept the Tenant's submissions that her January 2017 rent was paid on time in the same fashion and the Landlords simply refused to send a staff member to that office to pick up her rent cheque.

In addition, I considered how the current Landlords have changed the Tenant's access to an after hour's method of paying her rent and have refused to accept multiple postdated rent cheques, which are a form of legal tender. I find the Landlords actions to be a clear attempt to manipulate the Tenant into signing their PAP program.

After consideration of the totality of the evidence before me I issue the following **Orders:**

- The Tenant's January 1, 2017 rent was paid on time;
- The Landlord is to withdraw / reverse the late payment charges of \$25.00 for January 2017;
- The Tenant's claim for the stop payment fee for her January 2017 cheque is granted in the amount of **\$12.50**;

Regarding the Tenant's request to recover the \$30.00 notary public fee to obtain a notarized statement, I find that the Tenant has chosen to incur these costs which cannot be assumed by the Landlords. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. A cost incurred due to a choice in the type of evidence a party wishes to have created is not a breach of the Act. Therefore, I find that the Tenant is not entitled to recover the costs for a notarized statement and the claimed is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenant the sum of **\$112.50** (\$12.50 + \$100.00) forthwith.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce their rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$112.50.

### Conclusion

The parties settled on a payment method as outlined above and the Tenant was partially successful with her application.

This decision is final, legally binding, 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: February 06, 2017

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Residential Tenancy Branch