



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

This hearing dealt with the tenant's 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 the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of the tenant's application and materials was confirmed. Based on the landlord's testimony I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act. The landlord testified that they had not served the tenant with any materials.

At the outset of the hearing the tenant testified that this tenancy has ended and they withdrew the portion of their application seeking to cancel the 10 Day Notice. The tenant still sought to recover the filing fee for this application.

Issue(s) to be Decided

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The monthly rent for this tenancy was \$1,000.00, payable by the first of each month. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated April 28, 2019 with an end of tenancy date of June 30, 2019 (the "2 Month Notice"). In accordance with the 2 Month Notice the tenant withheld the last month's rent in the full amount of \$1,000.00.

The landlord issued a 10 Day Notice dated June 8, 2019 for a rental arrear of \$1,000.00 arising on June 1, 2019. The landlord testified that they did not agree to the tenant's withholding of rent and gave evidence about damages and the condition of the suite.

Analysis

In accordance with section 51 of the Act, a tenant who receives a notice to end a tenancy for landlord's use is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. A tenant may withhold the amount from the last month's rent.

It is not open for the landlord to refuse to pay the tenant the amount entitled or to dispute the tenant's right to withhold the last month's rent in accordance with the Act. I find the landlord's submissions regarding the condition of the suite and losses they have incurred to be irrelevant, immaterial to the matter at hand and of no consequence.

I find that there was no rental arrear as the tenant was entitled to withhold the last month's rent in accordance with the Act. The landlord issued the 10 Day Notice despite having no basis for doing so. As such, the tenant filed the present application. A landlord is in the business of taking payment for providing rental units and they must do so in accordance with the legislation. It is not acceptable for a landlord to disregard the provisions of the Act and issue Notices to End Tenancy when there is no factual basis that would give rise to a landlord's right to do so.

I find that there is merit to the tenant's application. Accordingly, the tenant is entitled to recover the filing fee for this application from the landlord. I issue a monetary award in the tenant's favour in the amount of \$100.00.

Conclusion

The portion of the application disputing the 10 Day Notice is withdrawn.

I issue a monetary award in the tenant's favour in the amount of \$100.00 as against the landlord. The tenant is provided with the Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: August 1, 2019

Residential Tenancy Branch