



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46; and
- an authorization to recover the filing fee for this application, under section 72.

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

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

The landlord affirmed she is not seeking a monetary order or an order of possession, as the tenant paid the rental arrears, and the Notice is cancelled.

The application to cancel the Notice is moot, as the landlord cancelled the Notice.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for the cancellation of the Notice.

The tenant affirmed he paid September 2022 rent on September 01, 2022.

The landlord affirmed the ten day notices to end tenancy for unpaid rent are issued on the seventh day of the month and the tenant paid rent on the day the Notice was issued. The landlord did not notify the tenant that the Notice was cancelled.

As the landlord did not dispute the tenant paid the rental arrears within five days after the Notice was served and did not inform the tenant in writing that the Notice is cancelled, I authorize the tenant to recover the filing fee in the amount of \$100.00.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a tenant may be deducted from any rent due.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the tenant to deduct the amount of \$100.00 from the next rent payment.

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: February 06, 2023

Residential Tenancy Branch