



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord did not appear at the hearing. The tenant testified that she served the landlord with the hearing documents in person at his service address within three days of filing. I was satisfied that the tenant served the landlord with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The tenant is required to pay rent of \$800.00 on the first day of every month pursuant to her tenancy agreement. On February 11, 2016 the tenant and the landlord's agent participated in a previous dispute resolution proceeding (file number provided on cover page of this decision). As a result of that proceeding the tenant was awarded compensation totalling \$1,650.00. The tenant received a Monetary Order in this amount and the Arbitrator authorized the tenant to withhold rent as a way to satisfy the Monetary Order. The tenant requested payment from the landlord but when it was not received she issued a letter to the landlord advising the landlord that she would withhold rent until the Monetary Order was satisfied, as follows: withhold all of May 2016 rent, withhold all of June 2016 rent; and, deduct \$50.00 from rent payable for July 2016. The tenant paid \$750.00 for July 2016 as per her letter but the landlord served her with a 10 Day Notice to End Tenancy for Unpaid Rent dated July 8, 2016 indicating the tenant failed to pay rent of \$50.00 that was due July 1, 2016. The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

In this case, the tenant appeared at the hearing and presented evidence to demonstrate she had the legal right to withhold all or part of rent payable to the landlord, including \$50.00 for the month of July 2016. The landlord did not appear or otherwise provide evidence to demonstrate otherwise. Therefore, **I find the landlord did not meet the burden to prove this tenancy should end for the reason provided on the Notice to End Tenancy and I grant the tenant's request to cancel the 10 Day Notice dated July 8, 2016.**

I find the need of this hearing is due to the landlord's actions and I award the tenant recovery of the \$100.00 filing fee she paid for this proceeding. **The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.**

Conclusion

The 10 Day Notice dated July 8, 2016 is cancelled and the tenancy continues at this time. The tenant has been awarded recovery of the filing fee paid for this application. The tenant has been authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

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 31, 2016

Residential Tenancy Branch