Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNR, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the "Act"). The Tenant is seeking to cancel a Notice To End Tenancy for Unpaid Rent or Utilities, and for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The Tenant attended the hearing; however the Landlords did not. The Tenant provided affirmed testimony that he sent the Notice of Hearing to the Landlords using Canada Post registered mail on February 3, 2017. The Tenant testified that the Landlord K.K did not pick up her registered mail, but the corporate Landlord picked up their registered mail package. I find that the Landlord was served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The hearing process was explained and the Tenant was provided the opportunity to present his evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2016, as a one year fixed term tenancy. Rent in the amount of $1,475.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of $737.50.

The Tenant provided a copy of the tenancy agreement. The agreement contains terms surrounding guests and additional occupants and a rent increase that applies when there are occupants that are not listed in the tenancy agreement.

The Tenant submitted that the Landlord has incorrectly determined that the Tenant's guest is an occupant in the rental unit and the Landlord assessed a $1,200.00 rent increase and issued the 10 Day Notice.

The Tenant provided documentary evidence that his guest maintains a separate residence.

The Landlords failed to attend the hearing to support the validity of the 10 Day Notice to End Tenancy dated January 24, 2017.

The Tenant disputed the Notice within the required timeframe.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the Notice is valid. I find that the Landlord was properly served with the Notice of Hearing and failed to attend the hearing.

The parties are expected to comply with the terms of their written tenancy agreement.

The Landlord failed to attend the hearing to provide testimony or evidence that the Tenant's guest is an occupant and that there is a term in the agreement that the Tenant must pay additional rent.

Therefore, as the Landlord did not attend the hearing by 11:10 AM, I cancel the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 24, 2017.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his Application, I order the Landlord to repay the $100.00 fee that the Tenant paid to make application for dispute resolution.   The Tenant may deduct the amount of $100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The 10 Day Notice issued by the Landlord dated January 24, 2017, is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant may deduct the amount of $100.00 from one future 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: March 01, 2017

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Residential Tenancy Branch