



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request to cancel a section 40 Notice to End Tenancy and a request that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

August 4, 2010 the applicant was served with a one month Notice to End Tenancy for cause, on which numerous reasons for ending the tenancy had been checked off. The first reason given was:

Tenant is repeatedly late paying the rent.

The landlord testified that:

- The tenant's rent has been late on three occasions.

- The January 2010 rent was not paid until the end of February 2010, because two cheques that were given for the rent for January both went NSF.
- February 2010 rent was not paid until the end of February 2010 because that cheque went NSF as well.
- The June 2010 rent was not in paid until the end of June 2010, because again the initial cheque went NSF.

Therefore the rent has been repeatedly late.

The tenant testified that:

- He does not dispute that the rent was late on all three of these occasions, however it's because the landlord did not deposit the cheques on the first of the month.
- By the time the landlords did deposit the cheques he no longer had sufficient funds in his bank account to cover them.
- He does not keep track of what cheques have cleared his account and therefore assumed he had more money available for spending and did so, thus leaving insufficient fund available to cover the rent.

The applicant therefore believes it is not his fault that the rent was repeatedly late.

Analysis

It is my decision that the landlord has shown that the rent has been repeatedly late.

The tenant has pay the rent late on three occasions and four of the tenants rent cheques have not been honoured by the bank.

It is the tenant's responsibility to ensure that the rent is available in his account when he issues a rent cheque and if he fails to ensure that the money is available then it is his

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fault that rent is late and not the landlords for not depositing the cheque on the first of the month.

The tenant's excuse might be understandable if it happened on one occasion, however in this case there were four cheques issued for which there were insufficient funds.

Therefore it is my decision that the landlords have grounds to end this tenancy for repeated late rent payments and I will not set a Notice to End Tenancy aside.

Having upheld the Notice to End Tenancy for repeated late rent payments there is no need for me to make a finding on any of the other reasons given for ending the tenancy.

Conclusion

This application is dismissed without leave to reapply and I have issued an Order of Possession to the landlords for 1 p.m. on September 30, 2010.

At the hearing however the landlord stated that as long as the tenants himself vacates the manufactured home by September 30, 2010, they will allow him to leave the manufactured home on the rental site to attempt to sell it.

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: September 27, 2010.

Dispute Resolution Officer