



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to cancel a 1 Month Notice to End Tenancy for Cause.

Both parties appeared and were provided the opportunity to present their evidence and make submission to me.

Issue(s) to be Decided

Should the one month notice to end tenancy for cause be cancelled?

Background and Evidence

The tenancy began on July 14, 2011. Rent of \$865.00 is payable on the first day of each month. The tenant paid a security deposit in the amount of \$432.50 on August 20, 2011.

On October 31, 2011, the landlord served the tenant with a one month notice to end tenancy for cause. The notice indicates that the tenant is repeatedly late paying rent and the effective date of when the tenant must move out is November 30, 2011. The tenant disputed the notice within the time limit required under the Act.

The landlord's agent testified on August 5, 2011, the tenant's rent cheque for August rent and the security deposit cheque were returned from the bank as the tenant did not have sufficient funds in his bank account. On August 12, 2011, the tenant paid cash for August rent and on August 20, 2011, the tenant paid the outstanding security deposit.

The landlord's agent testified that the tenant requested that the landlord wait a few days to deposit the September rent cheque to ensure sufficient funds were in his bank account. On September 7, 2011, the tenant's cheque was deposited by the landlord and funds were available.

The landlord's agent testified on October 13, 2011, the tenants rent cheque for October rent was returned from the bank as the tenant did not have sufficient funds in his bank account. On October 31, 2011, the tenant paid cash in the amount of \$800.00 towards rent, leaving a balance of \$65.00 owing for unpaid rent and \$7.00 for a return cheque fee.

The landlord's agent testified on November 14, 2011, the tenant paid \$400.00 toward November rent, which left a balance owing of \$465.00 for November rent and a total balance of \$537.00.

The landlord's agent further testified that he had a conversation with the tenant, on how to clean up the ending of the tenancy, and if it was the intention of the tenant to use the security deposit to pay the outstanding balance for rent owed. The agent explained if it was the tenant's intention then the landlord would not be seeking any further monetary order for unpaid rent if tenancy ended on November 30, 2011.

The tenant testified that he agrees with most of the landlord's submission. The tenant disputes that he requested the landlord to delay depositing the cheque for September rent.

The tenant further testified that he does not owe the landlord any further rent for November 2011, as there was an agreement for the landlord to keep the security deposit and the landlord would not be seeking any further monetary order for unpaid rent.

Analysis

Based on the above testimony and evidence of the parties, I find the tenant has repeatedly paid his rent late. I find the tenant paid rent late on three instances in the recent past. Therefore, I dismiss the tenant's application to cancel the notice to end tenancy.

The landlord requested an order of possession effective November 30, 2011.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession effective **November 30, 2011, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

I am satisfied that the parties have made an agreement, that the landlord could keep the security deposit in the amount of \$432.50 to offset the balance of \$537.00 owing, and that the landlord is not seeking any further monetary order for unpaid rent.

The landlord is at liberty to apply for further monetary orders.

Conclusion

The tenant's application to cancel the one month notice to end tenancy is dismissed.

The landlord is granted an order of possession effective November 30, 2011, at 1:00 P.M.

I order that the landlord may keep the security deposit in full compensation for rent owed.

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: November 25, 2011.

Residential Tenancy Branch