



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Only issues that are relevant to my decision are outlined in this decision, although other issues were raised at the hearing.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside and is the Tenant entitled to recover the fee for filing an Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2011; that the parties have a written tenancy agreement; that the tenancy agreement was for a fixed term of one year; that the tenancy agreement indicates the tenancy will continue on a month-to-month basis or another fixed length of time once the fixed term of the tenancy agreement ends; and that rent is due by the first day of each month.

The Landlord and the Tenant agree that One Month Notice to End Tenancy for Cause was served to the Tenant on October 10, 2012, which declared that the Tenant must

vacate the rental unit by November 30, 2012. The reason stated for the Notice to End Tenancy was that the Tenant has been repeatedly late paying rent.

The Landlord submitted an affidavit from an Agent for the Landlord who has collected rent for the rental unit since January 18, 2012, in which he declared that the Tenant pays rent by slipping it under the door of the Agent for the Landlord's residence; that when he left for work at 6:30 a.m. on July 02, 2012 the Tenant's rent cheque had not yet been delivered; that when he returned from work at 4:00 p.m. on July 02, 2012 he determined that the Tenant's rent cheque had been slipped under his door; that he left a receipt for the July payment in the mail basket in the front entry of the residential complex, which indicates the cheque was not received on time; that when he left for work at 6:30 a.m. on August 02, 2012 the Tenant's rent cheque had not yet been delivered; that when he returned from work on August 02, 2012 he determined that the Tenant's rent cheque had been slipped under his door; that he left a receipt for the August payment in the mail basket in the front entry, which indicates the cheque was not received on time; that he observed the Tenant's rent cheque being slipped under his door at 5:45 a.m. on October 02, 2012; and that he left a receipt for the July payment in the mail basket in the front entry of the residential complex, which indicates the cheque was not received on time. The Landlord submitted copies of the receipts from July, August, and October of 2012.

The male Tenant stated that until May of 2012 the rent was paid by post-dated cheques and that after May of 2012 the rent was either paid in person; placed in the mail basket in the front entry by the first day of each month; and that if he noticed that the payment in the mail basket had not been picked up on the date it was due he would remove it from the basket and place it under the door of the Agent for the Landlord's residence. He stated that a rent cheque was placed in this mail basket on July 01, 2012 and that on July 02, 2012 he noticed it was still in the mail basket so he slid it under the Agent for the Landlord's door. He stated that a rent cheque was placed in this mail basket on August 01, 2012 and that on August 02, 2012 he noticed it was still in the mail basket so he slid it under the Agent for the Landlord's door. He stated that a rent cheque was placed in this mail basket on October 01, 2012 and that when he was leaving for the gym on October 02, 2012 he noticed it was still in the mail basket so he slid it under the Agent for the Landlord's door. The Tenant submitted copies of the rent cheques for July, August, and October, all of which are dated the first day of the month. The Tenant submitted copies of financial statements that show the rent cheques are cashed at various times of the month.

Analysis

On the basis of the undisputed evidence, I find that rent is due by the first day of each month. Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent.

I find that the Landlord has submitted insufficient evidence to show that the Tenant has paid rent late in July, August, or October of 2012. While I accept the Agent for the

Landlord's evidence that the cheques were not placed under his door until the day after they were due in July, August, and October of 2012, the Landlord has submitted no evidence to refute the male Tenant's testimony that they were left in the mail basket in the front entry of the residential complex on the first day of those months and then placed under the Agent for the Landlord's door on August 02, 2012 after he noticed they had not been picked up. Given that the Landlord communicates with the Tenant by leaving receipts for the Tenant in this mail basket and there is no evidence to show that the Tenant was prohibited from paying his rent in this manner, I find it reasonable for the Tenant to pay rent by leaving a cheque in this basket. In the absence of evidence to the contrary, I find that the Tenant paid his rent when it was due by leaving it in this mail basket on July 01, 2012, August 01, 2012, and October 01, 2012.

In the event that the Landlord does not wish the Tenant to leave rent payments in this mail basket, the Landlord has the right to provide the Tenant with written instructions on how rent payment should be delivered. The Tenant has the right to pay rent by post dated cheques. To provide clarity to this tenancy and in an attempt to avoid future disputes, I order the Landlord to provide the Tenant with a receipt that indicates how many post dated cheques are received, in the event the Tenant elects to pay by post dated cheque.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*, I set aside the One Month Notice to End Tenancy, dated October 03, 2012, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I authorize the Tenant to deduct \$50.00 from one rent payment, as compensation for the filing fee paid for this Application for Dispute Resolution.

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 13, 2012.

Residential Tenancy Branch