



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to End Tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began in May 2005. Rent of \$1,750.00 is payable monthly on the first day of each month. The Parties agree that on October 12, 2012, the Tenant received a One Month Notice to End Tenancy for Cause (the “Notice”) for the reason that the Tenant is repeatedly late paying rent. The Landlord states that the Tenant has paid rent late for August, September and October 2012.

The Tenant states that he was unaware that the unit had been sold and was paying his rent to his landlord for each of August, September and October 2012. The Tenant provided copies of his courier receipts for the delivery of the rent payments and the Landlord agrees that the courier receipts indicate that October rent was sent on October

1, 2012. The Landlord states that they received the rent cheques from the previous owner and landlord by mid-month for each of the months claimed by the Landlord to be late. The Tenant states he learned on October 12, 2012 that the unit had been sold to the current Landlord and the Parties agree that the November 2012 rent was sent directly to the current Landlord on time.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the undisputed evidence that rent was sent by courier to the previous landlord who in turn sent the cheques much later to the current Landlord, and considering the undisputed evidence that the courier receipts indicate only two months' rent were sent a couple of days late, I find that the Landlord has failed to substantiate that the Tenant has been repeatedly late paying rent. I therefore find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues. As the Tenant has been successful, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to reduce December 2012 rent by this amount.

Conclusion

The Notice is invalid and is cancelled. I Order the Tenant to reduce December 2012 rent by \$50.00. 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 27, 2012.

Residential Tenancy Branch