



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy, to recover the filing fee and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 11, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started October 1, 2011 as a one year fixed term tenancy and then renewed on a month to month tenancy basis. Rent is \$800.00 per month due on the 1st of each month. The Tenant said he paid a security deposit of \$500.00 in advance of the tenancy. The Tenant said there was a move in condition inspection report complete at the start of the tenancy.

The Landlord said the Tenants have been late with the rent payment for 12 months of the 19 month of the tenancy. The Landlord included a list of the months the rent was late, but there were no rent receipts provided to confirm the rent payment dates. As well the Landlord said the Tenant did not pay the full rent amount for January, February and March, 2013. The Landlord continued to say that they have to pay a mortgage on the rental property and the late rent payments cause issues with the mortgage payments. The Landlord said they issued the 1 Month Notice to End Tenancy for Cause because the Tenants are repeatedly late with the rent payments and they now want to end the tenancy. The Landlord was told by the Arbitrator that the effective vacancy date of July 1, 2013 on the 1 Month Notice to End Tenancy dated June 1, 2013

is incorrect and the under section 53 of the Act the effective vacancy date would automatically change to July 31, 2013. The Landlord said they understood this and they are not disputing the change of effective vacancy date on the Notice from July 1, 2013 to July 31, 2013.

The Tenant said he has not been late with the rent payments and so the 1 Month Notice to End Tenancy for repeatedly late rent payments should be cancelled. The Tenant said he did not submit any evidence to prove the rent payments were on time, but he is testifying that the rent payments were paid on time.

The Tenant continued to say that he had a verbal agreement with the Landlords that he did not have to pay the full rent for January, February and March, 2013. The Tenant said he would pay the unpaid rent now if that was required. The Landlord said they did not have any verbal agreement with the Tenant for partial payment of the rent for January, February and March, 2013. The Landlord said there is unpaid rent for those months.

The Tenant said he filed his application because he believes the Landlord served him the 1 Month Notice to End Tenancy at the wrong time of the month to be valid. The Tenant said the Landlord served him the Notice dated June 1, 2013 on June 2, 2013. The Tenant continued to say that the Notice to End Tenancy should have been issued at the end of the month; therefore the Notice is not valid and should be cancelled.

Analysis

The Landlord testified that the Tenants were late with the rent payment on 12 difference months during the tenancy and the Tenant testified that he paid the rent on time for all but one month because of a returned cheque. Neither party provided corroborating evidence that proved whether the rent was paid on time or not. The burden of proof is on the Landlord in this situation as the Landlord is making the claim that the rent was not paid on time. The burden of proving a claim lies with the claimant and when it is just the claimant's word against that of the respondent that burden of proof is not met. I find that the Landlord's claim that the Tenants' rent was late for 12 months of the tenancy is not proven.

Further though the parties both agreed that the rent for January, February and March, 2013 is not paid in full. The Tenant said he had a verbal agreement with the Landlord for a partial payment of the rent for these months and the Landlord said there was no agreement. As there is no corroborating evidence that there was an agreement to

reduce the rent payments, I accept the Landlord's testimony and I find that the Tenants have unpaid rent or late rent for January, February and March, 2013. Further I find the Tenant also had a late rent payment for May, 2012 due to a returned cheque.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline 38 states that a minimum of three late rent payments are sufficient to justify a Notice to End the Tenancy under these provisions.

As both parties testified that the rent for January, February and March, 2013 is not fully paid and that the May, 2012 rent payment was late due to a cheque being returned, I find that the Tenant has been repeatedly late on three or more rent payments. Consequently the 1 Month Notice to End Tenancy for Cause of repeatedly late rent payments is valid. I dismiss the Tenants' application to cancel the Notice to End Tenancy and I find the Notice to End Tenancy dated June 1, 2013. As well I am automatically changing the effective vacancy date pursuant to section 53 of the Act from July 1, 2013 to July 31, 2013.

As the Tenants have been unsuccessful in this matter I order that the Tenants bear the cost of the filing fee of \$50.00 which they have already paid.

Conclusion

The Tenants' application is dismissed without leave to reapply.

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: July 10, 2013

Residential Tenancy Branch

