



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession for cause pursuant to sections 47 and 55; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- c) To cancel a Notice to End Tenancy for cause.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated May 28, 2013 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is cause to end the tenancy or has the tenant demonstrated they should be given relief? Is the landlord entitled to recover filing fees also?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in September 2009, that rent is \$670 a month and a security deposit of \$325 was paid. A ten day notice for unpaid rent was served on May 2, 2013 but the tenant paid the rent that day and voided the notice. It is undisputed that the rent for May was late although the tenant contended he had the cheque ready on the 1st.

The landlord said the tenant repeatedly paid rent late and submitted evidence of receipts showing late payments over the past years. The landlord also supplied bank deposit statements showing the dates of deposits of the rent cheques over the past years. The tenant's advocate pointed out that all of the receipts except the most recent one appeared to be written with the same pen by the same person and he questioned if they were issued at the time of payment. The landlord's agent said he had only become involved in the past two months and he had advised the landlord to issue receipts based on her rudimentary rent records so the receipts were all written recently. The landlord's witness said that the landlord's procedure was to deposit the cheques within two or three days of receipt.

The tenant stated he always had the rent cheque ready on the first of the month but the landlord did not collect it; although they live in adjacent units, he said he does not like to bother her by going to her door. The landlord said the tenant could put the rent through their mail slot but he always waits a few days and has to be reminded to pay the rent. The tenant's advocate said that there appears to be a game as the landlord issued a two month notice to end the tenancy last year and did not succeed in ending the tenancy. The tenant provided copies of rent cheques that were all dated on the 1st of the month.

When I pointed out the problems of the onus of proof of payment to both parties, they agreed that rent payment henceforth would be by bank deposit on the first of each month and requested I incorporate an order for that in the decision.

In evidence is one copy of a ten day Notice to End Tenancy for unpaid rent in May, a one month Notice to end Tenancy for cause, receipts and bank records of the landlord and copies of cheques from the tenant..

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicants to prove on a balance of probabilities their positions. I find the landlord has not satisfied the onus to prove that the tenant was repeatedly late in paying his rent. I find that receipts issued several months or even a year after the fact based on rudimentary rent records are somewhat unreliable. I also find that the bank records are unreliable to prove when the rent was paid as the landlord's agent said the rent is deposited several days after receipt. I find proof of only one late rent payment is not sufficient evidence of repeated late payment of rent. Although other

grounds were cited in the Notice, the second page of the Notice was not received as evidence until the day of the hearing and no evidence as to other causes was provided either in documentary form or in the hearing. Hopefully now that the landlord has involved a professional agent, they will understand the necessity of maintaining meticulous records. As the landlord has not proved sufficient cause to end the tenancy, I set aside the Notice to End Tenancy dated May 28, 2013. **The tenancy is reinstated.**

Conclusion:

I dismiss the application of the landlord. As requested by the tenant, I set aside the Notice to End Tenancy dated May 28, 2013 and I find the landlord not entitled to recover filing fees for his application. **The tenancy is reinstated.** No filing fees were involved for the tenant.

As agreed by the parties, I HEREBY ORDER that the tenant pay his rent on the 1st of each and every month by direct deposit to the landlord's bank account and retain receipts of such payments as proof.

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: June 20, 2013

Residential Tenancy Branch

