



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fu Yuen Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

1. An Order Cancelling a Notice to End Tenancy - Section 47.

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?

Background and Evidence

The tenancy began in 2005. Rent of \$767.00 is payable in advance on the first day of each month. On July 9, 2013 the Landlord served the Tenant with a one month Notice to End Tenancy for Cause (the “Notice”). There is no dispute that the cause listed on the notice is repeated late payment of rent. For March to June 2013 inclusive, the Tenant had been given a \$100.00 discount on the rent in relation to compensation for construction.

The Landlord states that the Tenant has been repeatedly late paying rent and provided documentation of the payment history of the Tenant. It is noted that this evidence shows the Tenant paying rent late on numerous occasions until July 2012 and that following this month the Tenant was not late until December 2012. The Tenant does not dispute that rent for December 2012 and January 2013 were late with no excuse.

The Tenant states that the next two late payments in April and July 2013 were as a result of exceptional circumstances. The Tenant states that the April 2013 payment was late due to having been defrauded of monies from his bank account. The Tenant states that the July 2013 payment was returned late as the Tenant was not prepared for the amount of rent that was to be paid. The Tenant states that compensation offered for July 2013 rent was reduced to \$50.00 without notice beyond three days in advance of the rent payment date. The tenant states that as a result, he was not prepared for the smaller deduction and only had enough funds in his account to cover rent with a \$100.00 deduction.

The Landlord states that the building has been under construction and that the Tenant was informed that the compensation would be reviewed on a month to month basis as there was no certainty about when the construction would be completed. The Landlord states that the compensation for July 2013 was reduced as the majority of work was done by then.

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. Although the Tenant was repeatedly late prior to July 2012, as the Landlord did not act to end the tenancy at this point, I find that the Landlord has not substantiated late rent payments prior to July 2012. Given the evidence of bank fraud for the late April 2013 rent, I find that this late rent payment constitutes an extraordinary circumstance. Given the undisputed evidence that the July 2013 late payment arose following a 3 day notice from the Landlord of a smaller amount of compensation than had been previously provided and considering the reasonable requirement of a tenant to know in advance the amount of rent payable, I find that the late rent payment in July 2013 also constitutes an extraordinary circumstance. Given that the Tenant otherwise only failed to make two late rent payments in December 2012 and January 2013, I find that the Landlord has not substantiated that the Tenant has

been repeatedly late. I therefore find the Notice to be invalid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

Conclusion

The Notice is invalid and is cancelled.

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: August 02, 2013

Residential Tenancy Branch

