



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 – Section 46; 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 under oath

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 started on August 1, 2013. Rent of \$1,000.00 is payable monthly.

Although the written tenancy agreement does not indicate the date that rent is payable, the Tenant states that it is understood that rent is due on or before the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and states that this is what the parties agreed to.

The Landlord states that the Tenant’s first rent and security deposit cheque was returned NSF and that the Tenant paid the next rents on September 2 and October 3, 2013. The Parties agree that the Landlord gave the Tenant a one month notice to end

tenancy for cause (the "Notice") on October 17, 2013. The reasons for the cause are as follows:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit;
- Breach of a material term of the tenancy agreement; and
- Tenant's unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The Landlord states that the Tenant paid rent on time for November and was late for December 2013.

The Tenant states that the first cheque was not returned NSF and that when the Landlord told the Tenant that the cheque was not cashable, the Tenant immediately called the bank who informed the Tenant that there was no record of the cheque being returned. The Tenant states that he has never been provided this cheque back and that he gave the Landlord cash for this cheque prior to or on August 1, 2013. It is noted that the Landlord provided a copy of a cheque without any bank notation of return. The Tenant states that the Landlord, who lives in the lower suite, was not available on the first day of the months for September and October when he went to pay the rent to the Landlord and that as soon as he noticed her return he paid the rent. The Tenant states that his rent has always been ready to be paid on or before the first of each month but that he cannot help it if the Landlord is not there to receive it and that as the Landlord lived in the basement suite the Landlord can collect the rent at any time.

The Landlord states that the unpaid rent issue is the most pressing issue on the notice and that the Landlord does not feel that the remaining issues are as valid. The Landlord states that the Tenant has his son living with him part time and that this person was not listed in the tenancy agreement. It is noted that the Landlord provided evidence indicating that the Tenant informed the Landlord at the outset of the tenancy that his child would be living with him part time. The Landlord states that the Tenant agreed to

work for the Landlord around the unit in exchange for a reduced rental amount but has failed to carry out these terms. The Landlord submits that this is a breach of a material term of the tenancy agreement and that the Landlord would not have rented out the unit without such an arrangement in place. The Landlord provided email evidence from prior to the signing of the tenancy agreement. It is noted that nothing is contained in the tenancy agreement in relation to work by the Tenant or that the unit was being provided to the Tenant as an employee.

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. Ending a tenancy is a serious matter and not a step to be taken lightly particularly where children are involved. Given the lack of a bank indication that the first cheque was returned NSF, considering the Tenant's evidence that the rent for August 2013 was paid in cash on or before the first of the month, and considering the Landlord's evidence that prior to the Notice being issued the Tenant was only late on two other occasions, I find that the Landlord has failed to establish on a balance of probabilities that the Tenant was repeatedly late with rent at the time the Notice was given to the Tenant.

A material term of a tenancy is a term that is so fundamental to the tenancy that even the slightest breach would end the tenancy. Although the Landlord argues that the unit was provided to the Tenant at a reduced rent in exchange for an agreement to work for the Landlord and that this is a material term that the Tenant breached, I find the evidence to support this agreement to be vague and not at all clear. Further, if this arrangement were so important to the tenancy, it would have been contained within the terms of the tenancy agreement. As there is nothing in the tenancy agreement to indicate any amount of work by the Tenant, I find that the Landlord has failed to substantiate that the Tenant has breached a material term of the tenancy agreement or that the Tenant was an employee of the Landlord and that the unit was provided to the

Tenant as part of the employment. As the Landlord has not substantiated any of the reasons, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. As the Tenant has been successful, I find that the Tenant is entitled to recovery of the \$50.00 filing fee.

Section 19 of the Act provides that a landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Further this section provides that if a landlord accepts a security deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the undisputed evidence that the Landlord collected twice the amount allowed under the Act for a security deposit, I find that the Tenant is entitled to return of \$500.00. I order the Tenant to deduct the total entitlement of \$550.00 from a future rent payment.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues. I Order the Tenant to deduct \$550.00 from a future rent payment in full satisfaction of the claim.

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: December 11, 2013

Residential Tenancy Branch

