



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNDC, FF

Introduction

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

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 47;

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. 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?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2013. Rent of \$1,850.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit. On February 3, 2014 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The reason for the Notice is stated to be repeated late payment of rent and the effective date of the Notice is March 31, 2014.

The Landlord states that the tenancy agreement requires the provision of post dated cheques from the Tenant and that although the Tenant provided 6 months worth of cheques the first cheque for December 2013 rent was returned. The Landlord states that this was then paid by the Tenant on December 5, 2013. The Landlord states that they called the Tenant on January 3, 2014 to ensure that the rent cheque for that month was good and the Tenant informed them that the cheques were not good as the bank had issued cheques on the wrong account. The Tenant then paid the rent and was informed by the Landlord that rent was due on the 1st day of each month. The Landlord states that the rent has subsequently been late for both February and March 2014.

The Tenant states that he believed that when the 1st day of the month falls on a weekend or holiday that the rent is then payable on the first business day following. The Tenant states that March 2014 rent was late due to another but different banking problem.

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 tenancy agreement providing for the payment of rent on the first day of each month and considering that the Tenant failed to pay rent on time for three months in a row, I find that the Landlord has substantiated that the Tenant has been repeatedly late for rent. I do not find the Tenant's rationale for

the late payment on a business day to be reasonable or an indication that rent was not paid on time due to circumstances that could not be foreseen. As a result I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Landlord is entitled to an order of possession effective 1:00 pm on March 31, 2014. As the rent for March 2014 has been paid, I dismiss the Landlord's monetary claim. As the Landlord has been otherwise successful, I find that the Landlord is entitled to recovery of the \$50.00 filing fee and I order the Landlord to retain this amount from the security deposit.

Conclusion

I grant an Order of Possession effective 1:00 p.m. March 31, 2014 to the Landlord.

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: March 27, 2014

Residential Tenancy Branch

