



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant 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 following are agreed facts: The tenancy started October 1, 2013 on a fixed term to October 1, 2014. Rent of \$700.00 is payable monthly on the first day of the month.

Prior to this the Tenant lived in a different unit under a previous tenancy agreement that started in 2009. The Landlord collected a security deposit of \$350.00 on December 1, 2009 and continues to hold this amount under the current tenancy. The Landlord increased the Tenant's rent to \$714.00 as of June 1, 2014 and has collected this rental amount to and including November 2014. On October 11, 2014 the Tenant was served with a one month notice to end tenancy for cause, that cause being repeated late rent payments.

The Landlord states that the Tenants were given a rent increase at the same time as all the other tenants in the building and that the amount was calculated in accordance with the Act. The Landlord states that the Tenant was late paying rent in April, May, June, July, and October 2014. The Landlord provided rent receipts some of which were illegible, some for 2009 and at least one without a full date. No other accounting records were provided.

The Tenant does not dispute that prior to July 2014 rents were paid a few days late but that this occurred out of convenience for the Landlord's agent or for the Tenant and that this practice had occurred throughout the tenancies from 2009 until the Tenant was given a notice in June 2014 that late payments would not be acceptable. The Tenant states that since then there has only been one late rent payment for October 2014. The Landlord states that he has never agreed to late rent payments.

Analysis

Under a fixed term tenancy a landlord may not increase the rent until the end of the fixed term and in accordance with the notice provisions of the Act. As the Landlord collected an amount greater than that provided for under the tenancy agreement for the period June to November 2014 inclusive, I find that the Landlord owes the Tenant a rental return of \$84.00 (\$14.00 x 6 months).

Where a notice to end tenancy for cause 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 Landlord's invoices and the general application of rent increases to all of its tenants regardless of tenancy agreement terms, I find on a balance of probabilities that the Landlord would likely take a similarly casual approach to the collection of rents. I therefore accept the Tenant's evidence that some or all rent payments prior to July 2014 were late due to the Landlord's actions. As such I find that the Landlord has only substantiated that the Tenant made one late payment of rent in October 2014. As this does not show repeated late payment of rent, I find that

the Tenant has substantiated that the Notice is not valid and is entitled to a cancellation of the Notice. The tenancy continues.

As the tenancy is not ending, if the Landlord has not returned the rent overpayment to the Tenant by November 30, 2014, I order the Tenant to reduce December 2014 rent by the amount of \$84.00.

Conclusion

The Notice is cancelled and of no effect. I order the Tenant to reduce rent by \$84.00 as set out above.

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: November 28, 2014

Residential Tenancy Branch

