



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, FF

Introduction

This hearing convened as a result of a Tenant's application for an Order cancelling a 10 Day Notice to End Tenancy, an Order cancelling a Notice to End Tenancy for Cause, an Order allowing the Tenant to reduce rent for services agreed to but not provided and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notices be cancelled?
2. Should the Tenant be permitted to reduce rent for services agreed to but not provided?
3. Should the Tenant be entitled to recover the filing fee?

Background and Evidence

The tenancy began in November of 2009. Rent was payable in the amount of \$700.00 per month.

Introduced in evidence was a copy of a 10 Day Notice to End Tenancy which was not dated; pursuant to section 52 of the Act, the 10 Day Notice is invalid.

The reason for ending the tenancy as set out in the 1 Month Notice to End Tenancy for Cause issued on October 8, 2014 was the Landlord's allegation that the Tenant was repeatedly late paying rent.

Neither party submitted the residential tenancy agreement. The Tenant, P.D.F. testified that there was no such agreement as he and the Landlord had been best friends since childhood. The Tenant testified that he paid his rent in cash before the end of the month, and that he was early paying rent and in fact had overpaid by \$140.00. The Tenant submitted copies of the receipts for payment for same which confirmed this amount.

The Landlord testified that rent was due on the 1st of the month and that the Tenants were repeatedly late and had been late every month for five years. The Landlord failed to provide any evidence that this was a material term of the residential tenancy agreement. The Landlord also failed to submit any evidence that he made the Tenant aware that he expected payment on the 1st of the month after five years of purported late payments.

The Tenant also testified that internet was included in his rent until October 2014 when the Landlord cut it off. The Tenant failed to provide any evidence which would support his claim that this was previously included in his rent payments. Nor did the Tenant provide any evidence of the cost of this service as he stated he had yet to receive a bill.

Analysis

When a Tenant makes an Application to dispute a Notice to End Tenancy, the onus is on the Landlord to prove that the Notice should be upheld. As neither party submitted a copy of the residential tenancy agreement, and disagreed as to the date rent was due, it

is not possible to find, on a balance of probabilities that the Tenant was repeatedly late paying rent.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has failed to prove the Tenant was repeatedly late paying rent.

The Tenant failed to provide any evidence which would support a finding that internet was included in the rent until October 2014. The Tenant also failed to provide evidence of the cost he now bears. I find insufficient evidence to order that the rent be reduced by the amount the Tenant says he pays for internet. As the Tenant has yet to receive a bill, I dismiss his claim to reduce rent pursuant to section 65(1) with leave to reapply.

As the parties have had divided success, I decline to make any order with respect to the filing fee.

Conclusion

The 10 Day Notice is set aside as it does not comply with section 52. The Landlord failed to prove the Tenant was repeatedly late paying rent and as such the 1 Month Notice to End Tenancy for Cause is cancelled.

The Tenant failed to provide evidence to support his claim for a monetary order relating to the provision of internet services; accordingly, that claim is dismissed.

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 19, 2014

Residential Tenancy Branch

