



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OPC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on March 27, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled more time to make the application to cancel the Notice to End Tenancy?
- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated March 27, 2015?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 1, 2010. The present rent is \$1185.44 per month payable on the first day of each month. The tenant paid a security deposit of \$525 at the start of the tenancy.

The landlord requested that the tenant provide post dated cheques. The landlord seeks to end the tenancy on the basis the tenant is repeatedly late paying the rent. The landlord relies on the following:

- She testified the tenant and his ex-wife were often late paying the rent prior to May 2012 and as a result she gave the tenants a breach letter.
- The tenant's rent cheque for November 2014 was returned NSF.
- The tenant's rent cheque for February 2015 was returned NSF.
- The tenant's rent cheque for March 2015 was returned NSF.

The landlord testified that she presents the cheques to her bank on the first day of each month. The backside of each of the cheques indicates that the cheques were processed either one or two days later.

The tenant disputes the landlord's testimony of repeated late payments prior to May 2013. He acknowledged responsibility for the November late payment. However, he disputes responsibility for the February and March late payments. He testified there was sufficient money in his account on the first of February and the first of March. He testified that he noticed the problem prior to getting notification from the landlord on all three occasions and went to the office and paid the rent in full including a late payment fee and an NSF fee. He testified on other occasions he notice the landlord was late presenting the cheque and he has brought it to the landlord's attention.

The tenant has paid the rent in full for April and May 2015 and the landlord accepted the payment unconditionally. The tenant(s) have remained in the rental unit.

Grounds of Notice to End Tenancy:

Section 47(1)(b) of the Residential Tenancy Act provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Tenant's Application:

I ordered that the tenant be granted an extension of time to make the Application for cancel the one Month Notice to End Tenancy. The landlord has not been prejudiced as the tenant has paid the arrears including the late fee and NSF fee prior to the landlord giving notice that his cheques had been returned.

Policy Guideline 38 provides that a minimum of 3 late payments is required for "repeated late payment" of rent. After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. I do not accept the submission of the landlord that she can rely on late payment made prior to May 2012. The rent has been paid in fully on time until November 2014.

Neither party submitted evidence from their banks regarding the procedure for the processing of cheques. The back side of the cheques for November, February and March has a date stamp of the 2nd or the 3rd. The tenant accepted responsibility for the late payment in November 2015. In the absence of evidence to the contrary I accept the tenant's evidence that there were sufficient funds to cover the cheques on the first day of the month for February 2015 and March 2015. The landlord asked the tenant to provide post dated cheques. I determined in such a situation that there is an implied term that the cheques would be presented on the date of the cheque unless the landlord has advised the tenant to the contrary. The date stamp on the back of the February and March cheques indicated they were processed on the 2nd of the month. The landlord has failed to advise the tenant that the cheques may be presented and processed on

dates other than the first of the month. Further, the tenant paid the arrears including the NSF charge and late charge prior to the landlord advising him there was a late payment.

The tenant paid the rent in full for April 2015 and May 2015 before or on the due date. The landlord accepted the payment unconditionally without indicating they were continuing to rely on the one month Notice to End Tenancy. In doing so the landlord has reinstated the tenancy. The landlord could have accepted the payment for “use and occupation only” and preserved its rights under the Notice.

As a result I ordered the Notice to End Tenancy dated March 27, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Landlord's Application - Analysis - Order of Possession:

I ordered that the application of the landlord for an Order for Possession be dismissed as the Notice to End Tenancy has been 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: May 20, 2015

Residential Tenancy Branch

