



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the landlord.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in 2012 as a month to month tenancy for the monthly rent of \$1,150.00 due on the 1st of each month with a security deposit of \$575.00 paid. No written tenancy agreement was completed.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on May 12, 2015 with an effective vacancy date of June 30, 2015 citing the tenant is repeatedly late paying rent.

The tenant submits that approximately a year ago the government began garnisheeing his wages and he arranged with the landlord to pay partial rent on the 1st of each month and the balance on the 15th. The landlord submits that he did not agree to such an arrangement but that the tenant advised him that this would be how he would pay rent for a couple of months.

The landlord testified that the tenant has paid rent this way for approximately 1 year. The parties agreed that the landlord did advise the tenant approximately 6 months ago

that this practice was not acceptable and that the landlord expected rent to be paid on the 1st of each month.

The tenant stated that he paid rent for June in full on June 1, 2015 but that he was unable to pay July 2015 rent on July 1, 2015 because he had not received his cheques due to the statutory holiday so he paid \$500.00 on July 1, 2015 and deposited the balance on July 6, 2015. The landlord could not confirm, in the hearing, if he had received the balance of July 2015 rent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

Despite not having a written tenancy agreement the parties agreed that rent was due on the 1st of each month; that the tenant had stopped paying the full rent on the 1st of each month for nearly a year; and that the landlord had warned the tenant that he wanted rent paid on the day in the month that it was due (the 1st).

As such, I find the tenant did not have a right under the *Act* or tenancy agreement to not pay the rent in full on the 1st of each month. I find that the landlord has established that the tenant was late in paying the full amount of rent on at least 3 occasions and as such has sufficient cause to end the tenancy pursuant to Section 47.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and order the tenancy has ended in accordance with the 1 Month Notice to End Tenancy for Cause issued on May 12, 2015.

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: July 07, 2015

Residential Tenancy Branch

