



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on March 12, 2011. Rent is payable monthly on the first day of each month. As of July 1, 2015 rent of \$1,770.00 is payable. On July 3, 2015 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by sending the Notice through registered mail. The reason for the Notice is repeated late payment of rent.

The Landlord states that in 2014 the Tenant was late paying rent on three occasions: June, July and October. The Landlord states that in 2015 the Tenant paid the rent late in February, April and June. The Landlord states that prior to late 2013 the Tenant had been paying by post-dated cheques and the Parties then agreed that the Tenant could pay the rent by automatic payments to the Landlord’s account. The Landlord stated that the Tenant’s payments for October 2014 and June 2015 were received by the Landlord after the first day of the month.

The Tenant states that the rents for June and July 2014 were subject to a prior dispute that recently resulted in a monthly rental decrease. The Tenant states that the payment in February 2015 was late because the Tenant thought the payment had been automatically made when it had not. The Landlord agrees that this payment was not noticed or raised with the Tenant until April 3, 2015 and that the payment for this missed rent was received on April 7, 2015. The Tenant states that the rent for April 2015 was late as the settings for the automatic payments were time limited and had to be reset. The Tenant states that all the other payments were made on the first day of each month. The Tenant submits that the Landlord agreed to the method of automatic payment which was always made by the Tenant on the first and that the Landlord never had any problems with receiving the payments until immediately after receiving the Decision from the previous hearing.

The Tenant states that that there have never been insufficient funds to pay the rent and that whenever an error was raised by the Landlord it was rectified by the Tenant immediately. The Tenant states that since the June 2015 payment the Parties agreed to return to post-dated cheques as the form of payment. The Tenant states that the Landlord is only acting to end the tenancy because of the previous order reducing the rent.

The Landlord asks for an order of possession if the Notice is found valid or the Tenant's application is dismissed.

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.

While I accept the evidence that the Tenant was late paying its rent in June and July 2014, I consider these payments be too distant to constitute repeated late payments.

It is undisputed that the Landlord agreed that the Tenant could pay its rent by automatic deposit sometime in 2013. The only evidence of late rent payments provided by the Landlord commence in June 2014, the time of the previous dispute. I consider the Tenant's evidence that

prior to this date and from the onset of the agreement for automatic payment the Landlord accepted automatic payments made on the first of the month, regardless of being received by the Landlord a day or two late and I find therefore that the Landlord agreed to the late receipt of the funds as long as they were paid by the Tenant on the first day of each month through the agreed process.

It is clear that both Parties missed the February 2015 rent payment until April 2015 and that this payment was made as soon as the Tenant was informed. I consider this missed payment to be an inadvertent error that was corrected promptly. I find therefore that the Landlord has substantiated that the Tenant only paid its rent late for April 2015, the month that the Tenant failed to update its settings. I do not consider this sufficient evidence to establish the validity of the Notice. I find therefore that the Tenant is entitled to a cancellation of the Notice and the tenancy continues. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$50.00** filing fee and I order the Tenant to reduce future rent payable by this amount in full satisfaction of the claim.

Conclusion

The Notice is cancelled and the tenancy continues. I order the Tenant to deduct \$50.00 from future rent payable in full satisfaction of the claim.

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: September 10, 2015

Residential Tenancy Branch

