



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, DRI, MNDC, OLC, PSF, RR

Introduction

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

1. An Order allowing more time to make an application to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 47;
3. An Order in relation to a dispute of a rent increase - Section 43;
4. A Monetary Order for compensation - Section 67;
5. An Order for the Landlord to comply - Section 62;
6. An Order for the provision of services and facilities - Section 65;
7. An Order for a rent reduction - Section 65; and
8. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matters

Rule 2.3 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with leave to reapply. As the primary issue of the end of a tenancy and the validity of the reason for ending the tenancy is not related to the Tenant’s other claims, I dismiss all other claims with leave to reapply, with the exception of the claim for recovery of the filing fee which will be considered along with the claim for more time and for a cancellation of the notice to end tenancy.

The Landlord's legal counsel wished to address the issue of the fixed term of the tenancy agreement. As this issue is not relevant to the determination of whether the Tenant is entitled to more time to make its application to dispute the notice to end tenancy or whether the notice to end tenancy for cause is valid I declined to accept evidence or argument on this issue.

Issue(s) to be Decided

Did the Tenant apply within the time required?

Is the reason for the issuance of the notice to end tenancy valid?

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 1, 2014. Rent of \$1,400.00 is payable on the first day of each month.

The Landlord states that on July 9, 2016 the Tenant was served in person with a one month notice to end tenancy for cause (the "Notice"). The Landlord states that the neighbour witnessed this service. The Landlord did not provide any affidavit of service from this witness. There is no dispute that the reason stated for the Notice is that the Tenant has been repeatedly late paying rent. The Tenant denies that the Landlord served the Notice in person and states that the Notice was discovered in the mailbox on July 12, 2016. The Tenant made its application to dispute the Notice on July 22, 2016.

The Landlord states that the Tenant pays rent by making a deposit to the Landlord's bank account. The Landlord provided bank statements showing the deposit dates of the rent. It is noted that the statements shows payments made on January 4, May 2, June 6 and July 5, 2016. The Landlord states that she never agreed to any late payments for rent and that the Tenants never informed her when payments were made late.

The Tenant agrees that the payments for June and July 2016 were made late. The Tenant states that the payment for January 2016 was late as the banks were closed on January 1, 2016 and over the week-end. The Tenant states that the May 2016 rent payment was made on

Saturday April 30, 2016 and did not get processed until Monday May 2, 2016. The Tenant states that the Landlord verbally agreed to rent payments being as late as 5 days.

The Tenant states that the Landlord has been trying to evict them and that previous notices have been disputed and ultimately cancelled. The Tenant states that they have 3 school age children and if the Notice is not cancelled they will need more time to find another rental. The Landlord states that she is agreeable to obtaining an order of possession for November 30, 2016.

Analysis

Section 47 of the Act requires that upon receipt of a one month notice to end tenancy for cause the tenant has ten days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Given that the Landlord did not provide witness evidence to support the service of the Notice and considering the Tenant's evidence of finding the Notice in the mailbox I find that the Landlord has not substantiated on a balance of probabilities that the Notice was given to the Tenant in person on July 9, 2016. Accepting that the Tenant received the Notice on July 12, 2016 and as the Tenant made its application to dispute the Notice within 10 days of that date I find that the Tenant made its application in time and does not require an extension of time.

Section 47 of the Act provides that a landlord may serve a tenant with a notice to end tenancy where the tenant has been repeatedly late paying rent. RTB policy indicates that repeated late rent payments are late payments that occur within a close period of time of each other. The tenancy agreement provides that the Tenant must pay the Landlord on or before the first day of each month. The tenancy agreement does not state that the Landlord must receive the rent on or before the first day. There is no dispute that the rent payments were made by the Tenant over the length of the tenancy by bank transfer. By implication I find that this form of payment to the Landlord was acceptable. I also accept that there may reasonably be a day or two delay in transferring monies from one bank account to another bank account but consider that the day the Tenant made the transfer is the day the Tenant paid the rent. The Landlord provided no evidence of when the Tenant made the payments to the Landlord's account. The Landlord only provided evidence of when the monies reached the Landlord's account. The Tenant's undisputed evidence is that rent for June and July 2016 were late and that May 2016 rent was

paid in advance of the first day of that month. As there were several months between January and June 2016 I find that the Landlord has not substantiated that the Tenant has been repeatedly late. I therefore find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant's application claim to cancel the Notice has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 16, 2016

Residential Tenancy Branch