



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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 46.

The Landlord and Tenant 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 May 1, 2016. Rent of \$1,550.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit. On December 20, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Notice sets out \$825.00 as unpaid rent due December 1, 2016.

The Landlord states that the Tenant owed arrears of \$175.00 for October 2016 and \$775.00 for November 2016. The Landlord states that on December 15, 2016 the Tenant paid a total of \$275.00 towards the unpaid rent. The Landlord states that the Tenant paid \$1,550.00 on December 2, 2016 for November 2016 rent. The Landlord provides two statements of payments made: one for the rental unit and another for an

automobile. The rental statement does not indicate what amounts of unpaid rent are carried over to the next rent and there is no accumulated rent owing column. There is no amount indicated for late rent fees in the accounting. The Landlord states that the Notice also includes late rent fees of \$150.00. The Landlord states that late rent fees of \$25.00 are provided for in the tenancy agreement. The Landlord states that the Tenant paid her full rent for January 2017 and that no receipt was issued. The Landlord states that as the Tenant paid the rent they continued with the tenancy and would decide what to do after this hearing. The Landlord states that the Tenant is in a fixed term to end April 2017. A review of the Landlord's statement of rents paid indicates that the Tenant was late 5 times.

The Tenant states that prior to December 1, 2016 the Tenant owed \$170.00 in unpaid rent and that \$150.00 was paid towards this amount on December 15, 2016. The Tenant states that December 2016 rent was paid in full in two installments of \$775.00. The Tenant provides a print out of the e-transfers for rent payments made to the Landlord for the period of the tenancy.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent. The Landlord's accounting of rents paid or unpaid is not clear, either in documentary form or verbal at the hearing. The Landlord's accounting does not support the late payments claimed to be owed and included in the Notice as unpaid rent. The Landlord did not issue a receipt for "use and occupancy only" when the Tenant paid the full rent for January 2017 and indicated a possible reinstatement of the tenancy. The Tenant's accounting appears to show that rent payments were regularly made, some early, some late. The Tenant's evidence does appear to show that the rents were paid for December 2016 as stated. As the burden of proof lies with the Landlord and given the confusing evidence of rents paid and unpaid and the inclusion of a wrong amount of late rent fees, that should not have been included at all, I find that the Landlord has not met that burden of proof that the amount indicated on the Notice is the actual amount of rent

owed. I find therefore that the Notice is not valid. I therefore cancel the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and of no effect.

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: January 23, 2017

Residential Tenancy Branch