



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package late on June 1, 2017. Both parties confirmed that the landlord served a late documentary evidence package to the tenant on June 21, 2017. Neither party raised any service issues. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served and deem both parties served with the notice of hearing package on June 1, 2017 and the landlord's late documentary evidence on June 21, 2017 as per section 90 of the Act.

Although neither party submitted a copy of the 1 Month Notice, the terms of the 1 Month Notice were agreed upon and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to cancel the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that signed tenancy agreement was made, but that neither party provided a copy. Both parties agreed that monthly rent was payable on the 1st day of each month.

Both parties agreed that the landlord served the tenant with the 1 Month Notice dated May 8, 2017 on May 8, 2017. Both parties agreed that the 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent.

The landlord provided undisputed affirmed testimony that the tenant has been repeatedly late paying rent 22 out of the last 24 months, May 2015 to May 2017. The landlord has provided a spreadsheet, copies of online rent payments, 6 pages of requests for payment of rent between the two parties detailing the repeated late payment history.

The tenant argues that the landlord has accepted that payments of rent were made on the 2nd day of each month for the last 4-5 years.

The landlord disputes this stating that the late payment of rent has never been condoned and that is supported by the submission of 5 copies of 10 Day Notice(s) for Unpaid rent from June 2014 to May 2017.

The tenant argued that at no time has the landlord cautioned or warned that the continued payment of rent beyond the 1st day of each month would affect his tenancy. The landlord disputed this stating that the continued practice of serving 10 Day Notice(s) to the tenant serves as warnings to the tenant.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, it is clear based upon the undisputed affirmed evidence of both parties that the landlord served the tenant with the 1 Month Notice dated May 8, 2017. Both parties have confirmed that the payment of rent is due on the 1st day of each month. Both parties have confirmed that the tenant has been paying rent repeatedly on a day after the 1st of each month. The tenant has argued that the landlord has accepted that rent be paid after the 1st day of each month. The landlord has disputed this claim and stated that the repeated service of a 10 Day for Unpaid Rent shows that the tenant's behaviour is unacceptable.

I find in reviewing the evidence of both parties that the tenant has provided sufficient evidence to satisfy me that the landlord has accepted a pattern of repeated late payments beyond the 1st day of each month. The landlord's testimony is that from the beginning of the tenancy the tenant has been repeatedly late paying rent and that the tenant has been served multiple 10 Day Notice(s) for Unpaid Rent. Both parties confirmed that the tenant always complied by paying the rent within the allowed timeframe over an approximate 5 year period. The landlord has failed to provide any notice to the tenant that late rent payments would not be acceptable. I order that the tenant's application is granted and find that the 1 Month Notice dated May 8, 2017 is set aside. The tenancy shall continue.

The tenant is cautioned that as of the date of this decision the tenant will be noted as being provided this warning that late payment of rent beyond the 1st day of each month is not acceptable to the landlord and that continued late payments of rent could impact his tenancy.

As the tenant has been successful in his application and the tenancy continues, I authorize the tenant to withhold \$100.00 one-time from the monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted. The 1 Month Notice dated May 8, 2017 is set aside and the tenancy shall continue.

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: June 28, 2017

Residential Tenancy Branch