

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> CNC, OLC, ERP, RP

<u>Introduction</u>

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call. Both parties confirmed that the landlord was served with the notice of hearing package and the tenant's submitted documentary evidence via email and then in person on June 7, 2016. The landlord's agent (the landlord) provided undisputed affirmed testimony that the two documentary evidence packages were not served to the tenant. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the tenant's submitted documentary evidence. The landlord is deemed served as per section 90 of the Act. As for the landlord's documentary evidence, I find that as the landlord has failed to provide copies of their two documentary evidence packages that this evidence is excluded from consideration for this hearing.

At the outset the tenant provided an extensive explanation clarifying that he seeks an order for repairs re: a smoke detector, replacement of a cracked door and repair of a uneven floor. The tenant's request for an order for the landlord to comply with the Act, regulations or tenancy agreement (OLC) and an order for the landlord to make emergency repairs (ERP) was cancelled by the tenant as an error in selection. All of these things the tenant had confirmed that were unrelated to the main issue of the

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tenant's request an order to cancel the 1 Month Notice. RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for the landlord to make repairs. As this section of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss this section of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

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.

The tenant provided a "Rental Contract" dated December 12, 2015 which states in part that monthly rent is \$380.00 and payable on time "the last day of the month pay for the next month" and a security deposit of \$200.00 was paid. The contents also contain the "rules" of the agreement as claimed by the landlord. Both parties confirmed that the landlord was renting rooms within the residential premises with shared common bathroom, laundry and kitchen between the tenants.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated June 3, 2017. The 1 Month Notice sets out an effective end of tenancy date of July 3, 2017 and that it was being given as:

the tenant is repeatedly late paying rent.

The landlord claims that the tenant has been repeatedly late paying rent and references 3 occasions that the tenant failed to pay rent on time.

February 2017 Rent Paid on February 7, 2017 May 2017 Rent Paid on May 3, 2017 June 2017 Rent Paid on June 3, 2017

The tenant disputes these claims stating that for February and June rent that rent was available for payment in cash, but that the landlord did not attend with a receipt for him.

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The tenant claims that he will not pay rent in cash without a receipt being issued. However, the tenant stated that he cannot confirm or deny the landlord's claim that May 2017 rent was paid late as he does not recall. The tenant stated that since he began his tenancy the practice of the landlord providing a receipt for rent paid on the due date has been followed.

The landlord reiterated that on the evening of the 1st of each month, the landlord always attends to collect rent in cash with a receipt book. The landlord claims that multiple attempts were made by the landlord to collect rent on the first of each month until rent is paid, but the tenant is not home or does not answer his door.

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.

The landlord has claimed that the tenant is repeatedly late paying rent and has provided the 3 following instances of late payment of rent:

February 2017 Rent Paid on February 7, 2017 May 2017 Rent Paid on May 3, 2017 June 2017 Rent Paid on June 3, 2017

The tenant has disputed two of the three occasions as the rent is paid in cash and the landlord always fails to attend with her receipt book. The tenant has confirmed that he cannot dispute one of the occasions listed by the landlord.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord relies solely on direct testimony without any documentary evidence to support the claim of the tenant repeatedly late paying rent. The tenant has disputed the landlord's claim. As such, I find that the landlord has failed to provide sufficient evidence to justify the reason for cause. The tenant's application to cancel the 1 Month Notice dated June 3, 2017 is granted. The tenancy shall continue.

Conclusion

The tenant's application to cancel the 1 Month Notice dated June 3, 2017 is granted.

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 28, 2017

Residential Tenancy Branch