



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Y EXECUTIVES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 8, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for cause;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by S.R., an agent. Both parties in attendance provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord by leaving a copy at the Landlord's office within 2-3 days after receiving the Notice of Hearing package from the Residential Tenancy Branch. In addition, the Tenant testified he also served a documentary evidence package on the Landlord. The documentary evidence was received at the Residential Tenancy Branch on July 31, 2017. On behalf of the Landlord, S.R. acknowledged receipt of the Application package and the documentary evidence. I find the Landlord has been sufficiently served with the above documents for the purposes of the *Act*, pursuant to section 71 of the *Act*.

No issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issue to be Determined

1. Is the Tenant entitled to an order cancelling the notice to end tenancy for cause?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on April 1, 2016. Rent in the amount of \$1,175.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$587.50, which the Landlord holds.

The Landlord issued a One Month Notice to End Tenancy for Cause, dated May 30, 2017 (the "One Month Notice") on the basis that the Tenant was repeatedly late paying rent. The Landlord's agent, S.R., confirmed the Tenant was late paying rent on three occasions roughly eight months ago, but that rent is otherwise up to date. S.R. described the Tenant as a good tenant.

The Tenant testified that he wished to remain in the rental unit.

Neither party submitted a copy of the One Month Notice into evidence prior to the hearing. Accordingly, the Landlord agreed to provide a copy to me by fax by the close of business on August 15, 2017, which he did.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47(b) of the *Act* permits a landlord to end a tenancy when a tenant is repeatedly late paying rent. Policy Guideline #38 provides clarification with respect to ending a tenancy on the basis of repeated late payments of rent. It states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments...

...

Whether the landlord was inconvenienced or suffered damage as a result of any of the late payments is not a relevant factor in the operation of this provision.

[Reproduced as written.]

I find there is insufficient evidence before me to uphold the One Month Notice and end the tenancy. The late payments occurred roughly eight months ago; only the minimum number of late payments were made; and the rent is otherwise up to date. Accordingly, the Tenant's Application is successful and the One Month Notice is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee, which I order may be deducted from a future rent payment.

Conclusion

The One Month Notice is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant is entitled to deduct \$100.00 from a future rent payment in satisfaction of the filing fee paid to make the Application.

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: August 17, 2017

Residential Tenancy Branch