



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PORT ALBERNI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNSD, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated October 25, 2018, given alleging repeated late payment of rent. He also seeks to recover a \$200.00 pet damage deposit because he does not presently have a pet.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

It was noted at the outset of the hearing that the tenant, having paid a pet damage deposit at the start of the tenancy and, apparently, being permitted to keep a pet, cannot demand return of the deposit money until the tenancy has ended.

Issue(s) to be Decided

Has the tenant been repeatedly late paying rent?

Background and Evidence

The rental unit is the two bedroom half of a side by side duplex. The tenancy started in 2010. There is a written tenancy agreement. The current monthly rent is \$780.00. The landlord holds the previously mentioned pet damage deposit and a \$375.00 security deposit.

The landlord's representative Ms. K. testifies that the tenant was late paying rent in January 2017 and the landlord issued a ten day Notice to End Tenancy.

While the Notice in question alleges the tenant was late paying rent in January, February, April, May, June and July 2018, Ms. K. did not testify to those allegations nor provide any evidence such as a business record that might corroborate late payment for any of those months.

The tenant testifies that but for the January 2017 late payment he has not been late paying rent.

Analysis

The burden of proving late payment of rent is initially on the one alleging it: the landlord in this case. It has not met that burden. The evidence presented during this hearing does not satisfy that burden and show that the tenant has been repeatedly late paying rent. The testimony is conflicting and I can find no basis upon which to prefer Ms. K.'s testimony over that of the tenant Mr. D.'s.

Conclusion

The application is allowed. The Notice to End Tenancy dated October 25, 2018 is cancelled.

The tenant is entitled to recover the \$100.00 filing fee for this application. I authorize him to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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: December 17, 2018

Residential Tenancy Branch