



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for the recovery of the filing fee. The tenant also applied for a monetary order for loss under the *Act* and for an order directing the landlord to carry out repairs and reduce rent.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed the service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidence in accordance with sections 88 and 89 of the *Act*.

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 the tenant has applied for a monetary order and for an order directing the landlord to carry out repairs and reduce rent.

As these sections of the tenant's application are unrelated to the main section which is to cancel the one month notice to end tenancy for cause, I dismiss these sections of the tenant's claim with leave to reapply. Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy for cause.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began September 2012. The monthly rent is \$1,165.00 due on the first of each month.

The parties have had two prior disputes that were heard on May 16 and July 05, 2019. The parties referred to the disputes and filed a copy of the decision dated May 16, 2019 into evidence. The landlord had made application for an order of possession based on a notice to end tenancy for landlord's use of property that was dated on or about January 18, 2019. Since the notice was not signed or dated appropriately, in a decision dated May 16, 2019, the landlord's application was dismissed.

On May 16, 2019 the landlord served the tenant with a second notice to end tenancy. This notice was a ten-day notice for non-payment of rent for the months of March, April and May 2019. The tenant applied to set aside the notice to end tenancy and this dispute was heard on July 05, 2019. In a decision dated July 05, 2019 the Arbitrator found that the tenant was successful in his application as rent had been paid within the legislated time frame of five days.

On May 21, 2019, the landlord served the tenant with a third notice to end tenancy. This notice was a one-month notice to end tenancy for cause. The tenant disputed the notice in a timely manner and the dispute was scheduled to be heard on this date. The notice to end tenancy alleges that the tenant is repeatedly late paying rent and has allowed an unreasonable number of occupants in the unit.

The parties agreed that the tenant's roommate moved into the rental unit in June 2016 and continues to reside in the unit. The tenant stated that he had asked the landlord for permission to allow the roommate to live in the rental unit. The landlord stated that he agreed to allow the roommate on a temporary basis. The tenant testified that in the three years that have gone by since the roommate moved in, the landlord has had multiple conversations with the roommate and has even offered him a job. The tenant filed copies of text messages to support his testimony. The tenant also stated that the landlord did not once ask the roommate to move out and since the rental unit has three bedrooms, the tenant believed that two occupants is a reasonable number.

The landlord stated that on January 21, 2019, when he served the tenant with the first notice to end tenancy for landlord's use of property, the tenant did not dispute the notice and therefore the landlord assumed that the tenant was going to move out and was entitled to a month of rent-free stay. The landlord stated that he had a rent cheque for March 2019 which he returned to the tenant. The notice was set aside by an arbitrator and the tenancy continued.

At this point the testimonies of the parties differed. The landlord stated that he did not have rent cheques for the months of April and May 2019 and had returned the cheque for March 2019.

The tenant testified that in December 2018, he had provided the landlord with six postdated cheques as he always did and therefore the landlord had in his possession rent cheques for January to June 2019 and had cashed the cheques for January and February 2019.

On May 16, 2019 the landlord served the tenant with a 10 day notice to end tenancy for non-payment of rent in the amount of \$3,495.00. The tenant paid the outstanding rent within 5 days.

The tenant stated that he usually gave the landlord 6 postdated cheques and he filed a ledger of cheques given to the landlord. Two batches of cheques for the periods of July 2017 to December 2017 and for January 2018 to July 2018 are in sequential order. The tenant stated that for the period of July 2018 to September 2018, he had broken his wrist and gave the landlord monthly rent cheques. The next batch of cheques in sequential order are for the 3-month period of October 2018 to December 2018. All cheques provided to the landlord are dated for the first of each month.

The tenant stated that the landlord sent him a text message in December 2018 informing the tenant that he did not have rent cheques for "*January and on*". On December 20, 2018 the provided the landlord with six postdated cheques. The tenant filed copies of text messages that support his testimony that rents cheques were placed under the door and the landlord acknowledged the receipt of the cheques by thanking the tenant in a reply text message.

Other text messages show that the landlord would be requesting rent cheques in June and December and a text message from the landlord on December 19, 2016 states "*Please note I do not have any rent checks for the new year, pls arrange to leave 6 mos*".

The landlord testified that he received rent cheques for January and February 2019 and returned the rent cheque for March 2019 to the tenant in anticipation of the end of tenancy pursuant to a s.49 notice to end tenancy. The landlord maintained that he did not have rent cheques for the months of April, May and June 2019.

In support of his testimony that six postdated rent cheques were provided to the landlord, the tenant filed a letter from the bank manager dated June 14, 2019 that states that the tenant opened an account at the bank on December 04, 2018 and that cheques #5 and #6 dated January 01 and February 01, 2019 respectively were issued in the name of BC (landlord) in the amount of \$1,165.00 each.

The letter goes on to say that on May 23, 2019 a stop payment was ordered on cheques #7, #8, #9 and #10. Cheque #11, dated June 01, 2019 in the amount of \$1,165.00 made out to BC cleared the account of June 04, 2019.

The tenant stated that when he received the 10 day notice to end tenancy for non-payment of rent, he paid the amount cited on the notice and put a stop payment on the rent cheques that he had issued for the months of March – June 2019. The tenant drew my attention the numbers of the cheques that were in sequence and matched his version of events.

Other than the months of March, April and May 2019, the landlord did not testify about any other months that rent was late.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant is repeatedly late paying rent and has allowed an unreasonable number of occupants in the unit.

Based on all the evidence before me, I accept the tenant's testimony that he provided the landlord with six months of postdated rent cheques. The conversations by text message and the letter from the bank manager support the tenant's testimony that he provided cheques to the landlord that were dated for the first of the month.

Based on the above, I find on a balance of probabilities that is more likely than not that the landlord had in his possession post dated rent cheques for the months that he alleges that the tenant was late paying rent. Therefore, I find that the landlord has not proven that the tenant is repeatedly late paying rent.

The landlord has alleged that the tenant has allowed an unreasonable number of occupants in the unit. The tenant testified that the unit has three bedrooms and there are only two occupants including himself. The tenant also added that he informed the landlord that he was getting a roommate and the landlord agreed. The landlord stated that his approval was for a temporary stay. Both parties acknowledged that the approval was verbal.

The tenant provided sufficient documentation to show that the landlord communicated with the roommate and even offered him a job. The tenant stated that prior to this notice to end tenancy the landlord had not objected to the presence of the roommate during his stay of approximately three years starting June 2016.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to request the tenant to remove the roommate for approximately three years, pursuant to the doctrine of laches, I find that this aspect of the notice to end tenancy, namely the tenant has allowed an unreasonable number of occupants in the rental unit, must hereby be dismissed and the roommate can continue to reside in the rental unit.

Based on the above, I find that the landlord has not proven the reasons for the notice to end tenancy and therefore I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenants' application and set aside the landlord's notice to end tenancy dated May 21, 2019. As a result, the tenancy shall continue in accordance with its original terms.

Since the tenant is successful in his application, I award the tenant the filing fee.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.
The tenant may make a one-time deduction of \$100.00 from a future rent.

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 21, 2019

Residential Tenancy Branch