



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, PSF, RP, RR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 6, 2019, in which the Tenant sought the following relief:

- An Order cancelling a 1 Month Notice to End Tenancy for Cause issued on July 19, 2019 (the "Notice");
- an order that the Landlord
 - provide services or facilities as required by law; and,
 - make repairs to the rental unit;
- an Order reducing the Tenant's rent by the amount of repairs or facilities not provided; and,
- recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on September 30, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. In attendance for the corporate Landlord were the owner, A.B., her daughter, S.B., and an agent S.A. who attended to provide evidence of service of documents. The Tenant was also assisted by another tenant in the building, N.S.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

The Tenant named the Landlord's agent's assistant, M.A. to the application. Pursuant to section 63 of the *Residential Tenancy Act* I amend the application to remove M.A.'s name.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Additionally, hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the balance of the Tenant's claims; I therefore exercise my discretion and dismiss the Tenant's claims for

- an order that the Landlord
 - provide services or facilities as required by law; and,
 - make repairs to the rental unit;
- an Order reducing the Tenant's rent by the amount of repairs or facilities not provided; and,

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's daughter, S.B. testified as follows. She confirmed that there was no written tenancy agreement but that the Tenant signed an "Application for Room Rental" on April 21, 2005. A copy of that document was provided in evidence; in terms of the requirement to pay rent, the Application for Room Rental provided as follows:

Note: Rent is form the 1st to the 30th or 31st of the month. If you move in the middle of the month you pay till the end of the month.
Thirty (3) day notice is required to vacate premises.

The Landlord submitted that the Tenant paid rent late in the months of December 2018, May 2019 and June 2019; further noting that he paid the \$453.00 December 2018 rent on December 5, 2018, the \$464.30 May rent on June 1, 2019, and the \$464.30 June rent on June 11, 2019.

In response to the Landlord's testimony, the Tenant confirmed that he did not sign a tenancy agreement. The Tenant noted that he has lived there for almost 14 years. He testified that he paid his rent early most months (this was confirmed by both the Landlord's records and the Tenant's evidence). He stated that most of the time both the Landlord and her daughter would come to the rental unit, many times it was the S.A. The Tenant stated that they did not give him any prior notice of when they were coming, rather they would "just show up", and that this was the practice for the 14 years he lived there.

The Tenant confirmed that he paid his December 2018 rent on December 5, 2018 as that was the day the Landlord attended. Documentary evidence submitted by the Landlord indicates the Landlord attended on November 30, 2018, December 1, 2018 and December 2, 2018 to collect the rent. The Tenant stated that he was not aware the Landlord would be attending on those dates.

A letter submitted by the Landlord also suggested rent was due the day before the month for which the rent was payable. The Tenant confirmed that at no time did the Landlord say that rent was due the last day of the month preceding the month for which the rent was due, rather he just paid when the Landlord attended to collect the rent.

Due to health reasons, and as the hearing was concluding, the Tenant disconnected from the hearing. At that time the Tenant's advocate also noted that the Tenant paid his May rent on June 1 as he was awaiting the result of another hearing. The file number for that Decision is included on the unpublished cover page of this my Decision.

Analysis

The Landlord seeks to end this tenancy for cause pursuant to section 47(1)(b) which reads as follows:

Landlord's notice: cause

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...
(b)the tenant is repeatedly late paying rent;

To prove a tenant is repeatedly late paying rent the landlord must also prove when rent is due.

After consideration of the testimony and evidence of the parties and on a balance of probabilities I find as follows.

The evidence confirms the parties did not enter into a written tenancy agreement. The Landlord relied on the "Application for Room Rental" which indicated "rent was from the 1st to the 30th or 31st"; this document did not specify which particular day the rent payment was due.

While it may have been the practice of the Landlord to retrieve the rent the day before the beginning of the month for which the rent was payable, I am not satisfied the parties agreed that rent had to be paid on that date. The receipts submitted in evidence suggest the Tenant paid rent the day before the first of the month, or the first of the month for which the rent payment was payable. There was no consistent pattern of the rent being paid on one particular day or another.

As such, I am unable to find the Tenant was repeatedly late paying rent.

The Tenant's Application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the Act.

As the Tenant has been substantially successful, he may recovery is filing fee pursuant to section 72 of the *Act* by reducing his next month's rent by \$100.00.

Conclusion

The Tenant's Application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant shall recover the \$100.00 filing fee by reducing his next month's rent by \$100.00.

The Tenant's Application for the following relief is dismissed with leave to reapply:

- an order that the Landlord
 - provide services or facilities as required by law; and,
 - make repairs to the rental unit; and,
- an Order reducing the Tenant's rent by the amount of repairs or facilities not provided.

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: October 2, 2019

Residential Tenancy Branch