



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: the tenancy started on November 1, 2018. Rent of \$1,450.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. The Landlord gave the Tenant a one-month notice to end tenancy dated February 12, 2021 (the “Notice”). The only reason stated on the Notice is repeated late rent payments.

The Landlord states that the Tenant was late paying rent for September and October 2020 as the Tenant’s cheques were returned. The Landlord states that the Tenant then paid rent late for December 2020, January and February 2021. The Landlord states that after the cheques were returned in September and October 2020, they requested

that the Tenant pay the rent by e-transfer. The Landlord states that the e-transfer notices were received by the Landlord on the second day of each of the months from December 2020 to February 2021, inclusive.

The Tenant states that the cheques for September and October 2020 were returned due to an error by the bank. The Tenant provides a letter dated March 9, 2021 from this bank. The Landlord argues that the letter does not specifically state a banking error and that the letter only sets out the bank's apology.

The Tenant states that it made the e-transfer before midnight on December 1, 2020 but that for unknown reasons there was a delay in the message of the e-transfer to the Landlord. The Tenant states that they experienced technical difficulties with the app for the rent payment for January and was unable to log in due to an "error" stated on the screen. The Tenant states that by the next day the technical issues were resolved, and the Tenant made its payment later in the day on January 2, 2021. The Tenant states that in January 2021 the Tenant became concerned with the technical problems and asked the Landlord to pay by post dated cheques again but that the Landlord did not respond. The Tenant argues that it was only minutes late for the rent payments for December 1, 2020 and for February 1, 2021.

The Landlord agrees that the rents for December 2020 and February 2021 were received only minutes after midnight. The Landlord argues that the Tenant has a pattern of late payments that arose during the period March to August 2020. The Landlord states that the Tenant was informed that the Landlord would take post dated cheques after the Notice was served.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Section 7 of the COVID-19 Regulation provides that a landlord may not base late rent payments as a reason for

ending a tenancy for the affected period March 18, 2020 to August 17, 2020. Given the Landlord's evidence that the Tenant's pattern of late payments occurred during the affected period, I find that I may not consider evidence of these payments in relation to the reason for the Notice.

There is no evidence that the Tenant rent cheques for September and October 2020 were given to the Landlord late. The only evidence is that there was a bank error that resulted in the cheques being returned. Although the Landlord argues that the letter from the bank only makes an apology, I consider that the apology was for the bank error. For these reasons I find that the Tenant did not by act or negligence make late payments for these months.

Although the Tenant was late for December 2020, it is undisputed evidence that this payment was only a few minutes late and there is no evidence that the Landlord was inconvenienced or otherwise harmed by a payment made in the middle of the night. Given the Tenant's evidence that there were technical difficulties in making the January 2021 payment, that was a full day late, and that the Landlord was asked in January 2021 to accept post dated rent cheques again, I consider that the Tenant acted responsibly prior to February 2021 rent becoming payable to ensure the Landlord would receive the rent on time. As the Landlord did not accept this offer until after the Notice was served, I find that the Landlord acted to block the Tenant from avoiding further technical difficulties and allowing the Tenant to be assured that rents would be paid on time. Overall, ending a tenancy is a serious matter and it would be an extraordinarily harsh outcome for the Tenant to lose its home given the above circumstances. For these reasons I find that the Notice is not valid, that the Tenant is entitled to its cancellation and that the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 27, 2021

Residential Tenancy Branch