



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on June 8, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice); and,
- to recover the filing fee for the cost of this application.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence packages, and the Landlord confirmed he received the Tenant's Notice of Hearing package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice be cancelled?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agree that monthly rent is set at \$1,066.00 per month, and is due on the first of the month. The Landlord holds a security deposit of \$462.50. The Tenant stated that she has lived in the rental unit for approximately 7 years now, largely without incident.

The Tenant stated that she received the Notice on May 1, 2021. A copy of this Notice was provided into evidence. The Notice indicates that the Landlord issued the Notice because the Tenant failed to pay \$1,066.00 in rent that was due on November 1, 2019.

The Landlord stated that he issued this Notice because, after doing an audit of his accounting books in the spring of 2021, he noticed that there was no rent paid for November 2019. The Landlord stated that he asked the Tenant to prove to him that she paid the amount, but the Tenant did not provide enough evidence to satisfy the Landlord. The Landlord stated that the Tenant has not met the onus to prove she paid rent. The Landlord stated that he is often away on vacation in the winter months, and in late 2019, he went away for November, December, and part of January 2020. The Landlord stated that when he went away, he left the Tenant's post-dated cheques with the bank, and asked them to deposit them on the first of each month, as he had when he was in town.

The Landlord stated that after going back and forth with the Tenant about this rent amount from November 2019, the Tenant eventually provided him with copies of 2 cheque images. Both of these cheque images were provided into evidence. One was the post dated cheque for November's rent dated November 1, 2019 (stamped as cashed by the Landlord's bank on December 4, 2020), and the other was the post-dated cheque for December's rent, dated December 1, 2019, (stamped as cashed by the Landlord on January 2, 2020).

The Landlord and the Tenant both agree that the Tenant provides rent cheques to the Landlord one year at a time from August-July. Each year the Tenant will provide a new set of 12 post dated cheques.

The Landlord did not provide any banking records to corroborate the fact he was not paid November 2019 rent. He also did not provide any of the records, details or documents he discovered while auditing his books earlier this year for the months in and around November 2019.

The Tenant asserts that she paid November 2019 rent, and has not fallen behind and missed a month, as the Landlord asserts. The Tenant did not provide any account statements showing what was withdrawn in and around November 2019. However, the Tenant did obtain a copy of her November 2019 rent cheque, and the December 2019 rent cheque, referred to above. The Tenant stated that she has no control over when the Landlord deposits the cheques, and she pointed out that the Landlord (or the bank on behalf of the Landlord) cashed her November 2019 rent cheque in December, and her December rent cheque in January. The Tenant did not provide any explanation or account of what was paid before or after those two months.

Analysis

In the matter before me, when a Tenant applies to cancel a Notice to End Tenancy, at the hearing the Landlord bears the onus to prove basis for the Notice with testimony and evidence.

Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note the Tenant received the Notice on May 1, 2021, and applied to dispute the Notice within 2 days. The Notice was issued by the Landlord for \$1,066.00 in unpaid rent, which was due on November 1, 2019.

Having reviewed the testimony and evidence presented at the hearing, I note there is a notable lack of banking evidence from both parties in and around November 2019. Neither party submitted bank records or account statements in the months leading up to November 2019, and the months following. I note the Landlord was out of town in November 2019, and it was during this time that he asked the bank to deposit the Tenant's post-dated cheques on the first of the month.

A review of the cheque images provided into evidence shows that although the Landlord asked his bank to deposit the cheques for each month, on the first of each month, it appears November and December cheques were each cashed by the Landlord's bank around a month late. It is unclear why this happened. However, without a more

complete record of transactions, both before and after the material period of time, it is impossible to decipher and reconcile the anomaly. It is not clear whether all cheques were in fact cashed, perhaps not immediately, or whether one month was missed somewhere.

However, I note the Landlord bears the burden of proof to show that rent is owed, as laid out in his Notice. I find the Landlord has failed to do so. As such, I find the Tenant's application is successful. The Notice issued by the Landlord dated May 1, 2021, is set aside and cancelled. The tenancy will continue until ended in accordance with the *Act*.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I order that the Landlord repay the \$100.00 fee the Tenant paid to make the application for dispute resolution. I authorize the Tenant to reduce a future rent payment by \$100.00 in order to compensate her for the filing fee.

Conclusion

The Tenants' application is successful. The 10 Day Notice issued by the Landlord is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: June 08, 2021

Residential Tenancy Branch