



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This review hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s documents. The Parties confirmed that no recording devices were being used for the hearing.

Issue(s) to be Decided

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on April 1, 2016. Rent of \$1,375.57 is payable on the first day of each month. On January 12, 2022 the Tenant received a one month notice to end tenancy for cause dated January 5, 2022 (the “Notice”). The Notice sets out one reason: repeat late rent payments. The Notice details the late rent payments as August 2 and September 3, 2020, January 4 and May 2021, and January 4, 2022.

The Landlord states that in error the Landlord did not include in the details of the Notice that the Tenant also paid rent late for December 2021, having received this payment on December 2, 2021.

The Tenant submits that they were in hospital for the period December 15, 2021 to January 10, 2022 and that the Tenant was not allowed use of his phone or any other access for making its January 2022 rent payment while in the hospital. The Tenant does not know when they made their rent payments for the months indicated by the Landlord. The Tenant states that when they initially made a late rent payment a few years ago the Landlord informed the Tenant that they only needed to pay a late rent fee. The Tenant states that from this conversation they did not know that their tenancy was at risk for making late rent payments. It is noted that no late rent fee is provided for in the tenancy agreement.

Analysis

Section 47(1)(b) 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. As the rent payments made in 2020 and on January 4, 2021 are significantly more than a year old, I consider that these are too remote in time to be considered part of any repeated late rent payments. Given the Tenant's undisputed evidence of hospitalization and no control over their ability to pay the January 2022 rent until January 4, 2022, I consider that the Tenant was faced with exceptional circumstances that prevented a timely payment. As there are only two other late rent payments with one at least 6 months prior to the second late rent payment in December 2021 I find on a balance of probabilities that the Landlord has not substantiated that the Tenant has been repeatedly late paying rent. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant has been successful with its application, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 16, 2022

Residential Tenancy Branch