



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

On 3 March 2023, the tenant applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenant asked me for the following orders against the landlord.

1. Cancellation of a 10-day Notice to End Tenancy for unpaid rent for the month of February 2023 [the 'Notice'];
2. Reimbursement for the \$100.00 filing fee for this application.

Both tenant and landlord appeared at the hearing on 28 March 2023.

Issues to be Decided

Should I cancel the Notice?

Should the landlord pay the tenant the filing fee for this application?

Background and Evidence

On 15 June 2022, the landlord agreed to rent a unit to the tenant. The tenant and landlord agreed that:

1. each 'rental period' for this tenancy would begin on the 15th day of each calendar month [the 'Period']; and
2. the tenant would pay \$1,725.00 in rent to the landlord on the first day of each Period.

At some point in the tenancy, the tenant provided the landlord with a series of post-dated cheques for rent. The tenant dated each cheque for the first day of each calendar month.

On 2 February 2023, the landlord successfully deposited a cheque from the tenant, dated 1 February 2023 [the 'First Cheque']. I note that, because of the date of the First Cheque, this cheque could not have been intended for, or applied to, the January Period (*i.e.* 15 January to 14 February). Being dated 1 February, the landlord could not have deposited it 15 January, when they and the tenant agreed that the rent for the January Period was due. Therefore, this First Cheque could only have been applied to the February Period (*i.e.* 15 February to 14 January).

On 2 March 2023, the landlord issued the Notice to the tenant. In the Notice, the landlord alleged that the tenant failed to pay rent for the February Period, which was due on 15 February 2023.

A couple of weeks later, on 15 March 2023, the landlord deposited a cheque from the tenant, dated 1 March 2023 [the 'Second Cheque']. A few days after the landlord deposited this Second Cheque, the bank informed the landlord that the Second Cheque did not clear. This was not a surprise to the landlord: earlier, the tenant had informed the landlord that they had cancelled the Second Cheque.

As above, this Second Cheque could not have been intended for, or applied to, the February Period: it was dated 1 March, and so it could not have been deposited when the rent for the February Period was due, *i.e.* on 15 February.

Analysis

Considering (a) the dates of the post-dated rent cheques and (b) the timing of the landlord depositing the rent cheques, I find that the landlord accepted payment of rent for the February Period on 2 February, when the landlord deposited the First Cheque.

Accordingly, the landlord had no basis to issue the Notice. That is, the tenant had paid the rent that the landlord alleged in the Notice had been unpaid.

Conclusion

I grant the tenant's application. I cancel the Notice, and order the landlord to reimburse the tenant the \$100.00 filing-fee for this dispute, *per* section 72 (1) of the *Residential Tenancy Act* [the 'Act'].

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 30 March 2023

Residential Tenancy Branch