

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to cancel the notice to end tenancy
- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for cause

### Background and Evidence

This is a month to month tenancy which began on February 8, 2007 with monthly rent being \$1,100.00, payable on the first of each month. The tenant paid a security deposit in the amount of \$550.00 on February 8, 2007.

The landlord's agent testified that the rent has always been \$1,300.00 per month with a \$200.00 discount if the tenant cuts the lawn.

The tenant testified that the rent has always been \$1,100.00 and that he has always been responsible for cutting the lawn. The tenant also stated that he did not recall ever seeing the hand written tenancy agreement that the landlord submitted into evidence and the tenant questions the signatures that are on that document.

The landlord testified that a notice to end tenancy was left in the tenant's mail box, by the landlord's adult son, on approximately March 4, 2009 and then a corrected notice was left in the tenant's mailbox by the landlord's son on March 5, 2009. The tenant confirmed receipt of the corrected 1 month notice to end tenancy. As the notice was left in the tenant's mailbox it was deemed to have been served 3 days later, March 8, 2009 pursuant to section 90 of the *Residential Tenancy Act*.

The landlord testified that since approximately the fall of 2007 he had an arrangement with the tenant whereby the tenant is to place the rent payment in an envelope in the mailbox at the rental unit on the first of each month, and then the landlord picks up the envelope.

The landlord testified that the tenant has repeatedly paid his rent late and that the tenant has disrespected himself and his wife by telling them that they need an appointment to come to the rental unit and speak with the tenant. The landlord testified that the tenant was late paying rent on several months and paid rent on the following dates: February 3, 2008, August 5, 2008, March 5, 2008, December 1, 2008, January 20, 2009, May 29, 2008 and March 2009. The landlord submitted into evidence copies of his bank statement which refer to dates that the landlord deposited the rent payments and a copy of a returned payment notice from his bank.

The landlord testified that he refuses to accept rent payments from anyone other than the tenant, and that all rent payments must either be in cash or a cheque from only the tenant.

The tenant testified that he was late paying his rent in December 2008. He stated that he had separated from his child's mother and that he told the landlord he was going to look for a roommate to assist in paying the rent but that the landlord was not in agreement to the tenant finding a roommate. The tenant testified that when he tried to pay the January 2009 rent, with a cheque payable to the landlord from a rental assistance firm, the landlord refused the payment and that the tenant was late paying the rent in January 2009. The tenant stated that he was not late paying February, March or April 2009 rent and that he feels the landlord wants him evicted because his roommate is on Social Assistance. The tenant testified that ever since the landlord found out that his roommate was on Social Assistance that the landlord has wanted them out of the rental unit. The tenant stated that the landlord told him yesterday that if the landlord was not successful at the hearing then the landlord was going to put the house up for sale and evict the tenant.

The tenant testified that the March 2009 rent was placed in the mailbox on March 1, 2009 and that he began calling the landlord's son asking him to pick up the rent payment and then began sending the landlord's son text messages as he does not have voice mail.

The landlord testified that the March 2009 was not placed in the mailbox until March 5, 2009. The landlord referred to a cheque dated March 5, 2008 which was from the previous year. When the landlord was asked again when the March 2009 rent was paid he answered the second time as March 4, 2009.

The tenant has requested that the landlord issue him receipts for rent payments but that the landlord refuses to give receipts for any rent payments that are not paid in cash.

The landlord requested that a process be determined for what time the rent payment was to be placed in the mailbox. A discussion followed but the two parties were not able to agree on when the payment would be placed in the mailbox and have requested that it be determined in this decision.

### Analysis

The tenant has admitted to paying his rent late in December 2008 and January 2009 but that his rent was late in January 2009 partially because the landlord refused a cheque that was made payable to the landlord from a rental assistance program. The tenant contents that the landlord has submitted a tenancy agreement that the tenant has never seen nor signed.

The landlord's credibility is difficult to asses. Based on the landlord's testimony, he provided inconsistent evidence in his verbal testimony when he first stated that the March 2009 rent wasn't paid until March 5, 2009 and then changed his testimony to state rent wasn't paid until March 4, 2009, and yet the landlord submitted documentary evidence which shows a text message from the tenant to the landlord's son dated March 3, 2009 requesting the landlord's son to pick up the rent payment.

The landlord has confirmed that he refuses to issue receipts for payments issued by cheque and that based on the landlord's testimony he believes that his bank statement showing the date he made a deposit constitutes the date the rent is paid.

Based on the landlord's testimony, I find that he is not aware of his responsibilities as a landlord under the *Residential Tenancy Act* and I've advised the landlord to access the internet or acquire information from the Residential Tenancy Branch so he can educate himself on is responsibilities under the *Act*.

In this instance, the burden of proof is on the landlord to prove that the tenant has repeatedly paid the rent late. Three late payments are the minimum number sufficient

to justify a notice under these provisions; however a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

Based on the foregoing I find that the landlord has not proven that the tenant has repeatedly paid the rent late and rule in favour of the tenant's application. I hereby cancel the 1 Month Notice to End Tenancy.

### Conclusion

I note that the 1 Month Notice to End Tenancy which was issued on March 4, 2009 to be null and void as it was not completed correctly.

**I Hereby Order** that the 1 Month Notice to End Tenancy, issued on March 5, 2009, is cancelled, and is of no force or effect.

**I Hereby Order** the landlord to issue a receipt for every rent payment made by the tenant, regardless of the method of payment, cash, cheque, or bank draft.

**I Hereby Order** the tenant to place the full monthly rent payment, in an envelope, in the mailbox at the rental unit no later than the 1<sup>st</sup> of each month at 7:00 p.m.

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: April 21, 2009.

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Dispute Resolution Officer