



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OLC, FF

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. Three of the 4 landlords were served with Notice of this hearing; the 4th landlord attended the hearing.

The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application has been amended to correct the male tenant's name.

The landlord confirmed receipt of the tenant's application amended on April 23, 2012, to include cancellation of the Notice ending tenancy issued on April 19, 2012.

As a result of an error in the landlord's postal code the registered mail containing the application and tenant's evidence was not delivered until April 25, 2012. This caused the landlord to submit late evidence to the Residential Tenancy Branch. The landlord testified that a copy of the evidence was given to the tenant by placing a copy under the tenant's door, with a witness present. The tenant stated he did not receive the evidence.

The landlord's evidence was set aside and I explained the landlord was at liberty to provide affirmed testimony in relation to the documents that had been submitted.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Is the Notice to End Tenancy for Cause issued on April 19, 2012, of force and effect?

Background and Evidence

The landlord and the tenant agreed that on April 19, 2012, a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenants are required to vacate the rental unit on May 31, 2012.

The reason stated on the Notice to End Tenancy was that the tenants have been repeatedly late paying the rent.

The tenancy commenced on April 1, 2011 and was a fixed term to the end of March 2012, at which point it converted to a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month. A copy of the tenancy agreement was submitted as evidence.

The parties each confirmed that rent is paid by cheque and that on the first day of each month the landlord attends at the rental unit to obtain the payment.

The tenant did not dispute that on the first day of the month he gave the landlord the following payments:

	Rent payment issue date
December 2011	December 7, 2011
January 2012	January 8, 2012
February 2012	February 5, 2012
March 2012	Tenant placed stop pay on cheque and then reissued

The landlord testified that they had never relieved the tenant of the requirement to pay the rent on the due date set out in the tenancy agreement. The tenant had paid rent on time for the first 6 months of the tenancy and then began to issue post-dated cheques.

The tenant did put a stop-payment on his rent as the result of a dispute with the landlord, but when he discovered he was not entitled to do this; he reissued a cheque for March, 2012, rent.

The tenant stated that from the start of the tenancy he had been given permission to issue post-dated cheques, but that he did not need to do so until October, 2011. The tenant was given a letter dated February 29, 2012, telling him that the tenancy would

end effective March 31, 2012, and that he must move out. The tenant believes the landlord did not disagree with the method of rent payment but simply wishes to end the tenancy.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late paying the rent.

In reaching this conclusion I considered the tenant's acknowledgement that he has issued post-dated rent cheques on at least 4 occasions in the past 8 months; in breach of the term contained in the written tenancy agreement. When there is a dispute in relation to a term of an agreement I find that the written contract must take precedence.

Therefore, the Notice to End Tenancy for Cause issued on April 19, 2012, is of full force and effect; the tenant's application is dismissed.

The landlord did not request an Order of possession.

Conclusion

The 1 Month Notice to End Tenancy, dated April 19, 2012, is of full force and effect.

The tenant's application in relation to the Notice is dismissed. The tenant has leave to reapply in relation to the balance of his application.

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: May 03, 2012.

Residential Tenancy Branch