



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF, O

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Notice to End Tenancy for Cause and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I noted that the tenant had not supplied sufficient particulars to support the basis for her monetary claim, as required by section 59 of the Act, and I dismissed it with leave to reapply. As such, the remainder of this decision deals with the Notice to End Tenancy.

After giving my oral reasons for cancelling the Notice to End Tenancy, the landlord's lawyer requested an adjournment to gather and serve supporting evidence. The request was denied as I was satisfied the landlord had had sufficient time to prepare for this dispute and submit relevant evidence. A party's failure to sufficiently prepare for a hearing is not a sufficient basis to adjourn the proceeding.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant has occupied the rental unit since August 1, 2008. More recently, the parties executed a written tenancy agreement on May 30, 2012 requiring the tenant to pay the monthly rent of \$2,000.00 in two instalments: on the 1st and the 15th of every month; however, the landlord has had a practice of accepting rent on the 5th day of the

month instead of the 1st. The landlord submitted that the tenancy agreement provides that the tenancy is on a month-to-month basis.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) on February 1, 2013 and personally served it upon the tenant on February 3, 2013. The Notice has a stated effective date of February 28, 2013 and indicates the reason for ending the tenancy is because the tenant is repeatedly late paying rent.

The landlord verbally submitted during the hearing that the tenant provided the following cheques that were returned for insufficient funds:

Date of cheque	Amount of cheque
January 14, 2013	\$2,000.00
December 15, 2012	\$1,300.00
November 6, 2012	\$1,000.00
September 5, 2012	\$1,000.00
August 1, 2012	\$1,000.00
July 1, 2012	\$1,000.00

The landlord acknowledged the tenant eventually replaced the funds for the NSF cheques but he did not know when that occurred.

The tenant submitted that she did not write a cheque to the landlord for \$2,000.00 dated January 14, 2013. Rather, she submitted that she gave the landlord a cheque for \$1,500.00 on January 1, 2013 with a date of January 15, 2013. She claims the cheque cleared. The tenant also submitted that the cheque for \$1,300.00 date December 15, 2012 cleared.

The tenant explained that the landlord calls her before he comes to pick up her rent as she is expected to collect rent from the two basement suite tenants and hand all of the cheques over to the landlord. The tenant dates her cheque when the landlord comes to collect the rent. The tenant submitted that her cheques have not been returned for insufficient funds as submitted by the landlord but acknowledged that there are holds often placed on the cheques. The tenant also explained that she had paid the landlord \$50.00 whenever there is a hold on her cheque pursuant to a letter that she signed and gave to the landlord.

I noted that I was not provided a copy of the tenancy agreement or the letter providing for a \$50.00 payment for late or held rent cheques. The tenant stated that she was not

provided copies of those documents either but that the landlord has them in his possession.

I noted that the landlord had not provided any documentation for this proceeding, and in particular, copies of the tenancy agreement or the NSF cheques or other banking records that would support the landlord's submissions.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Considering I was provided disputed verbal testimony as to the payment of rent for the most recent months, the lack of supporting documentation from the landlord, and the landlord's uncertainty as to when rent was eventually paid by the tenant, I found I could not rely upon the landlord's verbal submissions only to uphold the Notice to End Tenancy.

As explained to the parties during the hearing, if a rent cheque is returned there are banking records usually given or available to the landlord that would substantiate the landlord's position. By failing to supply easily attainable records I find the landlord has not met his burden of proof and I cancel the Notice to End Tenancy with the effect that this tenancy continues.

The parties are strongly encouraged to familiarize themselves with their respective obligations and rights under the Act and Regulations. In particular, the requirements for collecting NSF or late fees from a tenant; and, a landlord's obligation to give the tenant a copy of the tenancy agreement, including any addendums or other documents providing for other terms or alterations to the agreement. It should be noted that a term in a tenancy agreement must meet the requirements of section 6 of the Act in order to be enforceable.

Finally, the tenant is cautioned that she must pay rent when due in accordance with the tenancy agreement and must not withhold rent unless she has the legal right to do so.

I order the landlord to compensate the tenant one-half of the filing fee she paid for this application as I find both parties have contributed to this dispute. In satisfaction of this order the tenant is authorized to deduct \$25.00 from a subsequent rent payment.

Conclusion

The 1 Month Notice to End Tenancy dated February 1, 2013 is cancelled and the tenancy continues at this time.

The tenant's monetary claims were dismissed with leave to reapply.

The tenant is authorized to deduct \$25.00 from a subsequent rent payment in order to recover one-half of the filing fee paid for this 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: February 27, 2013

Residential Tenancy Branch

