



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 14, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

The Landlord’s representative requested an adjournment of the hearing as the Landlord was unable to attend the hearing. I find that the Landlord has a representative who is knowledgeable about the tenancy and the Landlord received the hearing package in ample time to prepare his case and to submit evidence; therefore I dismiss the Landlord’s request to adjourn the hearing to a later time.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started approximately 15 years ago as a month to month tenancy. The Tenant said rent is an amount over \$300.00 per month payable in advance of the 1st day of each month. The Landlord said the rent was \$400.00 per month payable on the 1st of each month. The Tenant said he paid a security deposit but he does not remember how much it was.

The Landlord's brother said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated May 31, 2013 by personal delivery on May 31, 2013. The Effective Vacancy Date on the Notice is July 1, 2013. The Tenant is living in the unit and the Landlord's brother said he wants to end the tenancy.

The Landlord said the reason on the 1 Month Notice to End Tenancy is that the Tenant is repeatedly late with the rent payment. The Landlord's brother said they did not submit any evidence to support the Landlord's Notice to End the Tenancy. The Landlord's brother continued to say the Tenant makes rent payments periodically in varying amount and the rent has not been paid in full on the 1st day of the month. The Landlord did not specify any particular months that the Tenant was late paying the rent.

The Tenant said the rent is not \$400.00 per month, but an amount over \$300.00 and it varies each month. The Tenant said the rent receipts that he submitted to support his claim shows that he has paid the rent on time and the rent amount is an amount over \$300.00 and it varies. The Tenant said he submitted 8 rent receipts for the last year that show the rent was paid prior to the 1st of the month and the amount of rent varies each month but is over \$300.00. The Tenant requested the Notice to End the Tenancy be cancelled.

The Landlord's brother said the signatures on the receipts are not his brother's. The Tenant said the receipts were all signed by the Landlord. The Landlord's brother submitted no evidence to prove the Landlord's claims beyond the Landlord's brother's testimony.

Analysis

Policy guideline 38 states that a minimum of three late rent payments are sufficient to justify a Notice under these provisions.

The Landlord's brother has testified that the Tenant has been late with the rent payment many times, but the Landlord and Landlord's brother have not provided any evidence beyond their testimony that the Tenant has been late with the rent payment. The Tenant testified that he has not been late with the rent payments and the Tenant provided rent receipts that supported his testimony. The burden of proving the claim of late rent payments in the Notice to End Tenancy lies with the Landlord and when it is just the landlord's word against that of the tenant, that burden of proof is not met.

A claimant must prove his claim with corroborating evidence. As the Landlord has not proven his claim and the Tenant has established grounds that the rent was paid on time by providing rent receipts; I find for the Tenant and I order the Notice to End Tenancy for Cause dated May 31, 2013 to be cancelled and I order the tenancy to continue as in the verbal tenancy agreement between the parties.

Further I accept the Tenant's testimony that the tenancy is a month to month tenancy with a rent payment of over \$300.00 to be paid by the 1st of each month.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated May 31, 2013 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

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: July 09, 2013

Residential Tenancy Branch

