



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DPM Dennison Property Management
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on July 7, 2010. Rent of \$1,140.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$472.50 as a security deposit and \$200.00 as a pet deposit. On July 15, 2019 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The stated reason for the Notice is that the Tenant is repeatedly late paying rent. The Notice contains the following details: late rents paid for July, February and March 2019 and October, September and July 2018.

The Landlord states that the repeated late payments just started this past year. The Tenant states that it was late paying rent as a sibling became deceased in May 2018, the Tenant was unable to work and went on employment insurance until December 2018 or January 2019. The Tenant submits that insurance payments affected the late payments of rent and that money was tight for the late payments in March and July 2019. The Tenant states that the Landlords have always been informed when the rent was going to be late. The Tenant argues that the Landlords established a precedent for accepting late payments. The Tenant states that the Landlord is only now seeking to end the tenancy due to recent verbal confrontations between the Tenant and the owner in relation to construction that was occurring. If the Notice is upheld, the Landlord seeks an order of possession effective October 31, 2019.

Analysis

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Policy Guideline #38 provides that 3 late payments are the minimum number sufficient to justify a notice for repeated late rent payments. However, if the late payments are far apart it may be determined that, in the circumstances, the tenant cannot be said to be “repeatedly” late. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined to have waived reliance on this provision.

The undisputed evidence of 3 late rent payments in 2018 indicate nearly consecutive repeat late payments. However, the Landlord did not act at this point and I consider that the Landlord waived its reliance on ending the tenancy for repeated late rent payments in October 2018. Although the late February and March 2019 payments were consecutive, I consider the undisputed evidence that there was a gap of 4 months leading up to the third late rent payment for July 2019. Given this gap I consider that the July 2019 payment was too far apart to be considered to be evidence of three repeated late rent payments in 2019. For these reasons I find on a balance of

probabilities that the Landlord has not substantiated that the Tenant has been repeatedly late paying rent. I find therefore that the Notice is not valid for its stated reason. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant has been successful with its claim to cancel the Notice I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 19, 2019

Residential Tenancy Branch