



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenants seeking to have set aside a Notice to End Tenancy for cause, repeated late payment of rent, dated February 28, 2009 and setting an end of tenancy date of March 31, 2009.

Issues to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

During the hearing, the landlord gave evidence that the tenants had been late paying rent on nine different occasions and that she had issued warnings, including one in writing dated October 3, 2008.

By letter of April 1, 2009 with copy of a receipt for the April rent issued on April 1, 2009, the tenant made argument that the tenancy had been reinstated by virtue of the landlord's unconditional acceptance of the April rent.

Analysis

Residential Policy Guideline 11 instructs that, if landlord accepts rent for a period following the end of tenancy date set by the notice to end, the landlord can be seen to have waived the right to enforce the notice and to have re-instated the tenancy.

The landlord can avoid waiving the right to enforce the notice by issuing a receipt with the notation “for use and occupancy only” as evidence that acceptance of the payment does not continue the tenancy.

Conclusion

In this instance, the receipt bears no such proviso. Therefore, I must find that the tenancy has been reinstated. The Notice to End Tenancy date February 28, 2009 is set aside and the tenancy continues.

The landlord remains at liberty to issue a further notice if rent payment is again late at a time that is within 12 months of the first of three such instances.

April 9, 2009

Dispute Resolution Officer