



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MT, CNC and FF

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants have made application for to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. I note that the Tenants filed this Application for Dispute Resolution on the tenth day after they received the Notice to End Tenancy and, therefore, that they do not need to request more time to apply to set aside the Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on May 01, 2008 and that the Tenants were required to pay monthly rent of \$1,100.00 on the first day of each month.

The Agent for the Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental unit on April 10, 2009. The reasons stated for the Notice to End Tenancy were that the Tenants were repeatedly late paying rent; that they have allowed an unreasonable number of occupants in the unit; that the Tenants or a person permitted on the property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenants or a person permitted on the property by the Tenants have seriously jeopardized the health or safety or lawful right of another occupant; that the Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk; that the Tenants have engaged in illegal activity that has, or is likely to damage the Landlord's property; that the Tenants have engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of the Landlord or another occupant; and that the Tenants have engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the Landlord. The Landlord is only required to establish that one of the reasons cited on the Notice to End Tenancy exist.

The Landlord submitted a Tenant Ledger that shows the rent that was due on May 01, 2008 was not paid until May 05, 2008, at which time it was paid by cheque. The Tenant Ledger shows that the cheque tendered on May 05, 2008 was subsequently returned due to insufficient funds. The Tenant Ledger shows that the rent for May was eventually paid in cash on May 15, 2008. The Tenant does not dispute that the rent for May of 2008 was not paid on time.

The Tenant Ledger that was submitted by the Landlord shows that the rent for July of 2008 was not paid until July 08, 2008. The Tenant does not dispute that the rent for July of 2008 was not paid on time.

The Tenant Ledger that was submitted by the Landlord shows the rent that was due on December 01, 2008 was not paid by cheque. The Tenant Ledger shows that this rent cheque was returned due to insufficient funds on December 11, 2009. The Tenant Ledger shows that the rent for December was eventually paid in cash on December 18, 2008. The Tenant does not dispute that the rent for December of 2008 was not paid when it was due on December 01, 2008.

The Tenant Ledger that was submitted by the Landlord shows that the rent for April of 2009 was not paid until April 08, 2009. The Tenant does not dispute that the rent for April of 2009 was not paid when it was due on April 01, 2009.

Analysis

The evidence shows that the Tenants were required to pay monthly rent of \$1,100.00 on, or before, the first day of each month for the first year of their tenancy. Section 26(1) of the Act stipulates that a tenant must pay rent when it is due under the tenancy agreement.

I find that the Tenants did not pay their rent when it was due under the tenancy agreement on at least four occasions during the first year of their tenancy agreement, either because they tendered an NSF cheque or because the payment was not delivered in time. Specifically, I find that the Tenants did not pay their rent on time in May of 2008, July of 2008, December of 2008, and April of 2009.

Section 47(1)(b) of the Act stipulates that a landlord may end a tenancy by giving notice to end the tenancy if a tenant is repeatedly late paying rent. I find that paying rent late on four occasions within a twelve month period is sufficient cause to end a tenancy on the basis of being repeatedly late paying the rent.

I find that the Landlord served the Tenant with a One Month Notice to End Tenancy on April 10, 2009, in which the Landlord properly notified the Tenants that they were seeking to end the tenancy because the Tenants were repeatedly late paying the rent.

Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy because the Tenants were repeatedly late paying their rent, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy and I will grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on May 31, 2009.

As the Tenants have not demonstrated that their Application for Dispute resolution has merit, I am hereby dismissing their application to recover the fee for filing this Application for Dispute Resolution.



Dispute Resolution Services

Page: 4

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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 04, 2009.

Dispute Resolution Officer