



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a One Month Notice to End Tenancy for Cause and a Monetary Order to recover the filing fee.

The tenants served the landlord in person with a witness on December 01, 2009 with a copy of the Application and Notice of Hearing. The landlord confirmed he received this package. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Have the tenants provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?



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Background and Evidence

This tenancy started on March 01, 1996. The tenants originally rented both levels of the house and paid a monthly rent of \$1,400.00. The tenants claim it was agreed with the landlord at the time that they could find tenants to live in the basement suite and split the rent. They found tenants and the new tenant's paid \$500.00 for the basement suite and the tenants paid \$933.00 for their upper level suite. Originally the basement tenants paid the rent to the tenants who then paid the landlord. However, sometime in 2009 this arrangement changed and the basement tenants now pay their rent directly to the landlord.

The tenants testify that they were issued with a One Month Notice to End Tenancy on November 28, 2009 to vacate the rental property on December 31, 2009. The reasons given on this Notice were that the tenants were repeatedly late paying their rent. The tenants claim they have been late in the past with their rent and this has been accepted by the landlord without notice to end the tenancy. However, in 2009 they were late in June and November. On both occasions the landlord issued them with a 10 Day Notice to End Tenancy and the rent was paid within the five days allowed on the Notice.

The tenants claim that they have had trouble on occasion locating the landlord to pay the rent. The landlord wishes the rent payments to be made in cash so the tenants have to give this directly to the landlord. The landlord is supposed to come to collect the rent however he does not always do this on the day rent is due and the tenants have to telephone the landlord to get him to collect the rent. The tenants claim that the landlord has never made an arrangement for them to pay rent to another person except when his daughter was acting as his agent. The tenants dispute the reasons given on this Notice and feel it is unfair when they have only been late with their rent on two occasions in a year. The tenants have suggested to the landlord that they pay by

cheque each month and give the landlord post dated cheques for the first of each month to avoid these issues in the future.

The landlord states that the tenants have been repeatedly late paying their rent and as such seeks an Order of Possession. The landlord claims the tenants should contact him on the first of each month to pay the rent. The landlord states that if he is out of the country the tenants should pay the rent to another member of his family.

The landlord claims the tenants have been late with their rent over the years but he has never chased them. On occasion they have not paid their rent until the 20th of a month. The landlord states that he sent the tenants a letter dated June 07, 2009 which was a formal notice about their late payments of rent. The landlord has not presented this letter in evidence nor has the landlord presented any evidence such as a rent ledger or rent receipts showing rent has been repeatedly paid late .

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord has the burden of proof to provide sufficient evidence to support the reasons given on the One Month Notice to End Tenancy. I find the landlord has not presented any evidence to support the reason given that the tenants are repeatedly late paying rent.

The tenants do admit they have paid their rent late on two occasions in 2009 and did not pay their rent due on January 01, 2010 until the 4th of the month. The tenants claim that it is often difficult to get hold of the landlord on the first of the month when the rent is due and they have to telephone him to come and get the rent. I find that as the landlord has been collecting the rent in cash and has not made arrangements with the



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tenants for either postdated cheques to be issued for the rent or for another person to collect the rent in cash and provide a receipt for the rent when the landlord is unavailable, that two months late payments in one year does not constitutes repeatedly late payments.

Therefore, I uphold the tenant's application to cancel the Notice to End Tenancy and the tenancy may continue.

During the hearing the tenants offered to meet with the landlord to provide him with a series of post dated cheques for their rent and the landlord accepted this offer.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 28, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: January 12, 2010.

Dispute Resolution Officer