



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, OPC, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants applied to allow more time for them to dispute a Notice to End Tenancy, to cancel a one month Notice to End Tenancy issued for repeated late payment of rent and for cause, and to recover their filing fee for the Application.

The Landlord applied for an order ending the tenancy based on the one month Notice to End Tenancy and to receive a monetary order for money owed under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared for the hearing by teleconference call, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

It was determined at the hearing the Tenants had filed their Application in time and their Application was allowed to proceed, therefore, I am not required to address the issue of allowing more time to file.

Issues(s) to be Decided

Have the Tenants been repeatedly late paying rent?

Have the Tenants breached a material term of the tenancy agreement?

Is the Notice to End Tenancy valid or should it be cancelled?

Is the Landlord entitled to a monetary order?

Background and Evidence

This tenancy began in April of 2009. The parties entered into a written tenancy agreement. The rent agreed to was \$1,680.00 per month, payable on the first day of the month.

On December 14, 2009, the Landlord issued the Tenants a one month Notice to End Tenancy, with an effective end of tenancy date of January 31, 2010, for repeated late payment of rent and for breach of a material term of the tenancy agreement (the "Notice").

In evidence both parties submitted copies of documents, photographs and statements.

The Tenants and the Landlord agreed that the rent had been late in June and July of 2009. The Tenants provided the Landlord with a letter on July 21, 2009, outlining the terms of how the Tenants planned on paying late rent already due for July of 2009. The Tenants also explained in this letter how they would arrange to make future payments on time.

The January 2010, rent was paid late. The February 2010, rent had not been paid as of February 4, 2010, the date of this hearing.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenants have been repeatedly late paying rent in at least three instances. Policy guideline 38 states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

I find that the late payments are not sufficiently far apart to conclude the Tenants are not repeatedly late paying rent.

Therefore, I find that the Notice is valid and should not be cancelled. I dismiss the Tenants' Application for Dispute Resolution and I allow the Landlord's Application.

Due to these findings, it is not necessary to determine the issue of the material breach.

Conclusion and Conditional Orders

The Landlord is entitled to an **Order of Possession, effective two days after service on the Tenants**, and a monetary order for one month of rent for February 2010, and the filing fee, in the amount of **\$1,730.00**.

The Landlord consented that she would not enforce the Order of Possession until 1:00 p.m. February 28, 2010, on the condition that the Tenants pay her the amount of **\$1,730.00, before 5:00 p.m. on February 8, 2010**.

If the Tenants pay the Landlord the \$1,730.00 before 5:00 p.m. on February 8, 2010, they do not have to vacate the rental unit until **1:00 p.m. February 28, 2010**.

If the Tenants do not pay the \$1,730.00 before 5:00 p.m. on February 8, 2010, then the Landlord may enforce the Order of Possession and the Tenants have two days to vacate the rental unit.

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: February 04, 2010.

Dispute Resolution Officer