

DECISION

Dispute Codes: CNC and FF

Introduction

This application was brought by the tenant seeking to have set aside a 30-day Notice to End Tenancy for cause – repeated late payment of rent – issued on April 13, 2010, setting an end of tenancy date of May 31, 2010. The tenant also sought to recover the filing fee for this proceeding from the landlord.

Issues to be decided

This application requires a decision on whether to uphold or set aside the Notice to End Tenancy and whether the tenant is entitled to recover the filing fee.

Background and Evidence

This tenancy began on August 15, 2008 under a 12-month fixed term rental agreement, subsequently renewed for another 12 months set to end on August 31, 2010. Rent is \$1,075, due on or before the first day of the month and the landlord holds a security deposit of \$537.50 paid on August 8, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had established a pattern of late rent payments from the beginning of the tenancy.

The tenant stated that he had the agreement of the previous property manager that his rent would be accepted late to coincide with his income payments. He held that, for that reason, and because the landlord had consistently acquiesced with late payments, the materiality of the term requiring rent be paid on or by the first day of the month had evaporated.

The landlord stated that there had been such an agreement, but that it provided the tenant with only 10 days to pay the rent. She stated that the tenant had been given fair notice that late payments were no longer acceptable by 10-day Notices to End Tenancy issued on December 15, 2009, February 23, 2010, March 2, 2010 and April 8, 2010. She noted that two of those notices were issued after the 10-day grace period previously allowed to the tenant.

The tenant also gave evidence that he had paid the two month's rent due prior to the hearing on the first day of the month and that by accepting those payments without giving notice that they were "for use and occupancy only," the landlord had reinstated the tenancy."

Analysis

I find that by virtue of issuing the four Notices to End Tenancy for unpaid (late) rent, the landlord did give the tenant fair notice that late rent payments were no longer acceptable.

However, Residential Tenancy Policy Guideline 11 advises that:

“If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.”

As the landlord has provided no copy of a receipt for the June 2010 rent, paid after the May 31, 2010 end of tenancy date set by the notice and bearing the “use and occupancy only” notation and was not aware if such had been issued, I find that the benefit of the doubt should go to the tenant.

Conclusion

Therefore, I find that the tenancy was reinstated by acceptance of the June rent without advice to the tenant that that it was for use and occupancy only. Accordingly, the Notice to End Tenancy of April 13, 2010 is set aside and the tenancy continues.

As the tenant's late payments were the initiating cause of this hearing, I find that the tenant should remain responsible for his own filing fee.

June 14, 2010