



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, her witness and the landlords.

During the hearing the landlord verbally requested an order of possession should the tenant not be successful in this application to cancel the notice to end tenancy.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenant not be successful in her application, it must then be determined if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The tenancy began on May 1, 2010 as a 1 year fixed term tenancy with a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid on May 1, 2010.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated October 16, 2010 with an effective vacancy date of November 16, 2010 citing the tenant has been repeatedly late paying rent. The landlord testified they provided the tenant with the two page notice; a copy of the Residential Tenancy Policy Guideline #38; and a breakdown of the late payments.

The tenant testified that she did not receive the 2nd page of the notice. The landlord contends that they printed off two copies from the internet; provided one copy of each page to the tenant and retained one for themselves and that they have searched their records and have not found any additional copies of page 2.

The landlord also testified that they provided all 4 pages to the tenant and went through the documents with her. The tenant noted that someone had pointed out to her that she did not have the 2nd page.

The landlord testified that since the start of the tenancy the tenant has paid rent as outlined in the table that follows this paragraph. The landlords testified that when the rent was late they would call the tenant to make arrangements to have the rent paid.

Month	Date Rent Paid
May	May 4, 2010
June	June 3, 2010 June 11, 2010
July	Paid prior to July 1, 2010
August	August 10, 2010 August 20, 2010
September	Partial payment prior to September 1, 2010 September 9, 2010
October	October 3, 2010 October 16, 2010

The tenant testified that she had some issues that were beyond her control that impacted her ability to pay the rent when it was due. An example she provided is that she needed to buy her vehicle insurance. She noted that she had the landlord's verbal approval for the late payments.

The tenant also contends that the real reason that the landlords want to end the fixed term tenancy is that they want to move back in to the rental unit. The tenant's witness stated that he had a conversation with the male landlord who stated that they wanted to move back in.

The witness indicated that he had had this conversation several months ago but on further discussion it was determined this discussion occurred on or about October 8, 2010 and then again on or about October 16, 2010.

The landlord testified that this discussion was based on his frustration with the tenants on this residential property who continuously pay rent late and as such the landlords were contemplating to no longer rent should these tenancies end. The landlord testified they currently have the rental unit advertised to replace this tenancy should the tenant vacate the unit based on this Notice.

Analysis

Section 47 of the *Act* allows the landlord to end a tenancy for cause if the tenant has repeatedly paid rent later than the date it is due, by issuing a 1 Month Notice to End Tenancy that is compliant with Section 52 with an effective date that is not earlier than one month after the notice is received and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 52 states that in order to be effective the notice must, among other things, state the grounds for ending the tenancy and be in the approved form. I am not persuaded by the tenant's testimony that she only received page 1 of the Notice. I accept, based on the balance of probabilities the tenant was served with a complete notice that is compliant with Section 52.

Section 53 of the *Act* states that should the effective date of the Notice not comply with the requirements of Section 47 the notice is deemed to be changed to the earliest date permitted under Section 47. As such, the effective date of this Notice issued by the landlord on October 16, 2010 is deemed to be November 30, 2010.

Section 26 of the *Act* **requires** a tenant to pay the rent when it is due under the tenancy agreement and the landlord therefore has the right to expect rent when it is due. While the tenant contends that she had the landlord's approval for the late payment of rent, I find that this approval, based on the testimony of both parties, was obtained after the due date for the rent.

As such, I find the landlord had to pursue the tenant to find out why the rent had not been paid when it was due and the landlord therefore had no choice but to "approve" the late payment.

I do not accept, based on the one example provided by the tenant that she had other issues she needed to deal with that impacted her ability to pay rent. As noted above the rent is due when it is due under the tenancy agreement and the landlord should not have to wait for rent because the tenant has to buy vehicle insurance.

Conclusion

Based on the above, I dismiss the tenant's application in its entirety.

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: November 23, 2010.

Dispute Resolution Officer