



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with the Tenants' application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice).

Both parties appeared at the Hearing and had an opportunity to be heard and respond to other party's submissions.

Issue to be Decided

Should the Notice issued December 1, 2010, be cancelled?

Background and Evidence

The parties were in agreement to the following relevant facts:

- The Landlord ME was served with the Notice of Hearing documents on December 6, 2010.
- The Tenant was served with the Notice on December 1, 2010.
- The parties acknowledge receipt of the other party's evidence.
- Rent is due on the first day of each month.

The Landlord has alleged the following reason on the Notice for ending the tenancy:

The Tenant is repeatedly late paying rent.

The Landlord testified that the Tenant has been late paying rent for the following months: September, 2010; October, 2010; and December, 2010. He stated that any arrangements for late payment of rent must be directed through him. The Landlord testified that rent was due at 1:00 p.m. on the first of each month, pursuant to a term of the tenancy agreement.

The Tenant testified that prior to September, 2010, her rent was paid in full by Income Assistance directly to the Landlord, in advance of the date the rent was due. She stated that Income Assistance only paid a portion of her rent for September, 2010, and that she was not notified of this by either the Ministry, or the Landlord. The Tenant stated that the Landlord would have been aware on the Wednesday before the rent was due, but did not advise her until it was too late to pay September's rent on time.

The Tenant testified that she was home all day on October 1, 2010, but the Landlord's agent did not pick up the rent. The Tenant stated that she called the Landlord's agent on October 1, 2010, who said she would pick up the rent on October 4, 2010. The Landlord's agent did not pick up the rent until October 5, 2010. When the Landlord's agent picked up the rent, she also gave the Tenant a notice that future rent "can be dropped in the lock box by 1:00 p.m. on the 1st of each month". The notice also requested rent to be paid by cheque or money order. The notice was addressed to all of the Tenants.

The Tenant testified that she was late getting back from a doctor's appointment on December 1, 2010, and come home to find the Notice to End Tenancy on her door. She called the Landlord's agent and told her she would deliver the rent to her immediately. The Landlord's agent told the Tenant that she would come and pick up the rent on December 2, 2010, and that the Notice still stands. The Tenant believes the Landlord issued the Notice in retaliation for her request that the Landlord make repairs to the rental unit.

Analysis

The reason given to end the tenancy on the Notice is for repeated late payment of rent. The Residential Tenancy Policy Guidelines state that three late payments of rent can constitute “repeated late payments” for the purposes of issuing a Notice to End Tenancy under Section 47 of the Act. The Landlord included December’s late payment of rent in calculating the three late payments.

The Landlord’s agent was not available to give testimony in reply to the Tenant’s testimony regarding the three late payments. In any event, the Notice was issued on December 1, 2010. The Landlord testified that rent was due by 1:00 p.m. on the first of each month, pursuant to the tenancy agreement (a copy of which was not provided in evidence). The Act provides that parties cannot contract outside of the Act. Rent which is due on the first of the month may be paid at any time up to the end of that day (i.e. 12:00 midnight). A term in a tenancy agreement that is outside the provisions of the Act is unenforceable. I find that the Notice was premature, as it was issued and served before the end of the day on the date that rent was due. Therefore, the Tenant’s application is granted. The Notice is cancelled.

The Tenant was cautioned that rent must be paid on the day that it is due. She was also cautioned that it is the Tenant’s responsibility to ensure that rent is paid when it is due, not the Landlord’s responsibility to collect the rent.

Conclusion

The Notice to End Tenancy issued December 1, 2010 is cancelled and the tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: December 22, 2010.
