



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNC, OLC, FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

Background and Evidence

This tenancy started on September 1, 2010. Month rent is \$875.00, due on the first day of the month. The rental unit has 2 bedrooms and one bathroom.

The Tenant received the Notice to End Tenancy on February 28, 2011.

The Landlord gave the following affirmed testimony:

- The Tenant is repeatedly late paying rent. She has been late for the months of October, 2010, November, 2010 and December, 2010.
- The Tenant paid cash rent, in an envelope, for the month of October, 2010. The Landlord collects rent from all of her tenants on the first Monday of each month, and makes up receipts in advance. The Landlord gave the Tenant a receipt for October's rent before she got home and opened the envelope and discovered there was only \$15.00 in the envelope. The Tenant did not pay the remaining \$860.00 until the middle of October, 2010.
- The Tenant paid \$675.00 in cash and a cheque in the amount of \$200.00 for November's rent. The cheque was returned to the Landlord "NSF".

- The Tenant paid December's rent by cheque. The Landlord could not negotiate the cheque because of insufficient funds in the Tenant's account.
- The Tenant's boyfriend has moved into the rental unit. The Tenant has two children. Her boyfriend has two children, who visit him every second week. Every second weekend, there are two adults and 4 children living in the 2 bedroom rental unit. The Tenant's neighbours are complaining about the noise and the toys strewn about the Tenant's yard.

The Tenant gave the following affirmed testimony:

- The Tenant agreed that she was late paying rent for the months of November and December, 2010.
- The Tenant denied being late paying rent for the month of October, and stated that there was \$875.00 in the envelope she gave to the Landlord, not \$15.00.
- The Landlord does not always provide receipts for rent.
- The Tenant's boyfriend does not live with her, but stays with her 3 or 4 nights a week. His two children visit about once a week during the daytime to play with her kids. In addition, his children stay overnight every second weekend.
- The Tenant's children sleep in bunk beds in the master bedroom. When the Tenant's boyfriend's children (a boy and a girl) stay overnight, they either sleep on a futon in the master bedroom, or the boy sleeps on the futon and the girl sleeps with the Tenant and her boyfriend in the 2nd bedroom.

Analysis

The Landlord seeks to end the tenancy because the Tenant is repeatedly late; and because the Tenant has allowed an unreasonable number of occupants in the rental unit.

Residential Tenancy Branch Policy Guideline 38 provides that three late payments are the minimum number required to justify ending a tenancy. The Landlord did not provide sufficient evidence that the Tenant was late paying rent in November, 2010. In fact, the

Landlord issued a receipt for rent paid in full on the date the Landlord picks up rent from the Tenants.

The rental unit is a 2 bedroom unit and I find that it is too small for 6 people to be living there, even on a part-time basis. This is not a case where there are occasional guests staying with the Tenant. This is a routine, regular occurrence where the Tenant's boyfriend lives at the rental unit at least 50% of the time and it is his children's home for 50% of the weekends in a month. Therefore, I find that the Tenant has allowed an unreasonable number of occupants in the rental unit and that it is a valid reason for ending this tenancy.

The Tenant's application to cancel the Notice to End Tenancy is dismissed. The effective date of the end of tenancy is March 31, 2011.

Section 26(2) of the Act requires a Landlord to provide receipts for rent paid in cash. The tenancy is ending and therefore I decline to Order the Landlord to comply with Section 26(2) of the Act. The Landlord is cautioned with respect to the provisions of Section 26(2) for future reference.

The Tenant has not been successful in her application and is not entitled to recover the cost of the filing fee from the Landlord.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, **at the time scheduled for the hearing,**

(a) **the landlord makes an oral request** for an order of possession, and

(b) the director dismisses the tenant's application or
upholds the landlord's notice.

(emphasis added)

The Landlord did not request an Order of Possession at the Hearing, so I have not provided one with this Decision.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

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: March 17, 2011.
