



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenant on March 31, 2011 seeking to have set aside a one-month Notice to End Tenancy for cause (repeated late payment of rent) dated March 28, 2011. The tenant further seeks compensation in the amount of \$25,000 for loss of quiet enjoyment and authorization to change the lock on the door to the rental unit.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld, whether the tenant is entitled to monetary compensation and whether an order that the tenant be permitted to change the lock is warranted.

Background and Evidence

This tenancy began on April 8, 2008. Rent is currently \$661 and the landlord holds security and pet damage deposits of \$300 each.

Including the present hearing, this tenancy has been the subject of four hearings in the past seven months. The first, in September 2010, was concluded by agreement between the parties.

Two hearings in March of 2011 dealt with essentially the same fact pattern and events with respect to a Notice to End Tenancy for cause, repeated late payment of rent, and the tenant's monetary claim for loss of quiet enjoyment.

In the first of the March hearings, the landlord did not attend and did not succeed on a subsequent application for a Review Hearing. The Notice to End Tenancy could not be upheld and the tenant was awarded a \$600 Monetary Order on the question of loss of quiet enjoyment.

In the second March hearing which resulted from applications by both parties, while the Dispute Resolution Officer found that there had been three instances of late payment of rent, she found that the landlord had reinstated the tenancy by failing to notify the tenant that a subsequent rent payment did not reinstate the tenancy. The notice was set aside.

Beyond that, however, both applications were dismissed without leave to reapply.

Analysis

Section 47(1)(b) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause if a tenant is repeatedly late paying the rent three such instances in one year is often sufficient to establish the breach.

However, in the present matter, the landlord has provided no evidence of further late payment since the last hearing. Therefore, I must find that the question has already been decided in favour of the tenant (*res judicata*). In the absence of any new cause, I must set aside the Notice to End Tenancy of March 28, 2011.

I find that the tenant's claim for \$25,000 was dismissed without leave at the last hearing, and in the absence of any new, compelling evidence, I find that claim to have been disposed of at the previous hearing. In addition, I heard no new evidence that would warrant an Order that the tenant be permitted to change the lock on the door.

Conclusion

The Notice to End Tenancy of March 28, 2011 is set aside and all other claims dismissed without leave to reapply unless a change in circumstance so warrants.

April 20, 2011