



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the notice to end tenancy?

Background and Evidence

The rental unit consists of a small cabin on a manufactured home park. The month to month tenancy started in 2005 and the current rent is \$450.00 per month.

In his documentary evidence, the landlord provided in part a copy of a 10 Day Notice to End Tenancy for unpaid rent for the month of June 2011; 9 late rent receipts from November 2010 to June 2011; a June 5th, 2011 warning letter; and a copy of a 1 Month Notice to End Tenancy for Cause dated June 13th, 2011 and effective July 15th, 2011 for repeatedly late paying rent, and for breaching a material term of the tenancy agreement.

The landlord testified that the tenant has been repeatedly late in spite of a letter from the owners of the park in May 2011 reminding all tenants that rent must be paid on time, and another warning letter from the landlord on June 5th, 2011.

In his documentary evidence, the tenant provided a copy of a letter addressed to the Residential Tenancy Branch dated June 29th, 2011, wherein he states in part that he has been late paying rent in the past, that he is now caught up, and that he ought to be given another chance. The landlord acknowledged receipt of that letter and stated that the owners declined to continue the tenancy in view of the tenant's history of non-compliance.

Analysis

Although the landlord entered no evidence concerning the tenant's breach of a material term of the tenancy agreement, there is no dispute on the issue that the tenant was repeatedly late paying rent. Section 38 of the *Residential Tenancy Policy Guideline* states in part that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The guideline goes on to specify that three late payments are the minimum number sufficient to justify issuing a notice to end tenancy, whether the late payments were consecutive or not.

Section 40(1) of the *Manufactured Home Park Tenancy Act* states in part that; a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying the rent.

On the evidence the tenant was late more than three consecutive times and the landlord was justified in issuing the notice. Section 40(2) of the Act states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 46(1) of the Act provides in part that if a landlord gives notice effective on a date that

does not comply with this Division, the notice is deemed to be changed to reflect the correct date. In this matter, tenancy is based on the first of the month and the notice was issued June 13th, 2011; therefore the earliest effective date to end the tenancy is July 31st, 2011.

Conclusion

The tenant's application is dismissed. The 1 Month Notice to End Tenancy is valid, and the effective date of the end of the tenancy is changed from July 15th, 2011 to July 31st, 2011. At the hearing, the landlord did not make an oral request for an order of possession pursuant to Section 48(1) of the Act; if necessary, the landlord may make an application for dispute resolution and request an order of possession.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 08, 2011.

Residential Tenancy Branch