



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on July 20, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2011 as a month to month tenancy. Rent is \$1,425.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$712.50 on October 1, 2010.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 5, 2011. The Landlord said they served the Notice on July 5, 2011, by posting it on the Tenant's door. The Effective Vacancy date on the Notice is August 3, 2011.

The Landlord continued to say that the Tenant has been late with the rent payment 46 times since the tenancy started in March, 2007. The Landlord said they have worked with the Tenant and had a payment agreement to help bring the Tenant's rent payments back to a current status. This agreement was in place from December, 2009 to January, 2011. The Landlord said the Tenant made the January rent payment on time and had a zero balance in January, 2011. The Landlord continued to say the Tenant fell back into arrears in May, 2011 and the payments for May, 2011, June, 2011 and July, 2011 were late, consequently the Landlord issued a Notice to End Tenancy for Cause on July 5, 2011 stating repeated late rent payments as the main reason for issuing the notice. The notice also sites significantly interfering or unreasonably disturbing other occupants or the landlord and adversely affecting the quiet enjoyment,

security safety or physical well being or other occupants or the landlord. The Landlord said the Tenant has not maintained his park site and mobile home and it has caused complaints from other occupants. The Landlord submitted three breach letters dated July, 2009, June, 2010 and September, 2010 as evidence of the breach in the Tenancy. The Landlord said they are frustrated with the Tenant not paying the rent on time and the state of disrepair of his mobile home and site.

The Tenant's advocate said the Landlord's accounting system is incorrect as they receive a monthly cheque from the Ministry for the Tenant's rent payments and they have been applying it to the previous month not to the upcoming month as she said it should be applied. The Tenant's Advocate said if they applied the payment for the advance month then there would be no late fees and the Tenant's account would have a credit not a negative position as the Landlord says it is. The Tenant's advocate said there were some problems with the payment in May, June and July, 2011 from the Ministry but those issues are worked out and the rent payments should now continue to be made on time. The Tenant's advocate submitted copies of the Ministry's cheques to support that the rent payments were made on time.

The Tenant's Advocate continued to say that the breach letters were issued over 8 months ago and the Tenant has corrected the issues that caused the breach letters therefore they believe the reasons of interfering and disturbing other occupants is no longer an issue. The Landlord said these reasons are still issues as the mobile is still in disrepair and the site is still messy. The Landlord submitted photographs to show the mobile home is in disrepair.

The Tenant's Advocate completed their testimony by saying the Landlord's accounting procedures are incorrect and that the Tenant is current on his rent. As well the Ministry will be sending the rent payment 10 days prior to the 1st of each month so the Tenant's rent will be paid on time in the future. Consequently the Tenant's Advocate requested an order to cancel the Notice to End Tenancy for Cause as she said the Notice is not valid, because the Tenant and the Landlord had an agreement to bring the rent current and the Tenant has made his payments on time except for May, June and July, 2011 because of issues with the Ministry.

The Landlord concluded his remarks by saying the Tenant has been repeatedly late with rent payments since the start of the tenancy. He has worked with the Tenant to bring the Tenants account current, but now it has fallen into arrears again and the payments for May, June and July, 2011 have been late. The Landlord said he has had enough and now he wants to end the tenancy.

Analysis

Section 20(1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

I find the Tenant does not have the right under the Act to deduct all or a portion of the rent and therefore rent is due on the first day of each month.

There was contradictory testimony and evidence given by the parties with respect to the rent payments made and how the rent payments were accounted for. It was agreed that the Tenant's rent payments were late many times during the first 2 years of the tenancy and then an agreement was made between the Tenant and the Landlord to bring the rent arrears current. This agreement was in effect until the Tenant's rent arrears were paid, which happened in January, 2011. As of January, 2011 I accept the rent arrears payment agreement was completed and the Tenant's account was current. After this date I find the tenancy resumed as per the tenancy agreement. On reviewing the financial information submitted by both parties I accept the Landlord's account ledger and accounting for the rent payments and as result I find the Tenant was late with his rent payment in May, 2011, June, 2011 and July, 2011.

Section 40 (1) (a) of the Manufactured Home Park Tenancy Act which says a landlord may end a tenancy by giving a notice to end the tenancy if a tenant is repeatedly late paying the rent. As well the Residential Tenancy Policy Guideline 38 says that three late payments are sufficient to justify a notice under these provisions. Consequently I find the Tenant was late paying his rent for May, June, and July, 2011 and therefore the Tenant has not established grounds to prove that he has not been repeatedly late with his rent payments. Consequently, I dismiss the Tenant's request for an order to cancel the Notice to End Tenancy for Cause dated July 5, 2011 with an effective vacancy date of August 31, 2011.

Conclusion



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The Tenant's application is dismissed with leave to reapply.

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*.

Dispute Resolution Officer