



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 2010 with subsidized monthly rent of \$219.00. On August 19, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant is repeatedly late paying rent.
- The tenant is in breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant has been late paying her rent 7 times in the past year and 2 of the tenants cheques were returned as NSF. The landlord stated that he has issued a 1 month notice to the tenant before and has also issued numerous 10 day notices for unpaid rent to the tenant.

The landlord stated that the tenant did pay the September 2011 rent and that the tenant was not provided with a receipt stating 'for use and occupancy only'.

The tenant acknowledged that there had been problems with getting the rent paid on time and that this was due to the tenant not receiving child support payments. The tenant stated that she is very low income and not getting these payments as mandated had impacted the tenant's ability to pay the rent. The tenant stated that when she paid the September rent and no one said anything to her that she was hoping that the landlord would again not pursue evicting her.

The tenant stated that she had applied to dispute the notice but that when she had to have her cell phone number changed the Residential Tenancy Branch had been unable to contact her to pick up her hearing documents. The tenant stated that she was then advised that she would have to reapply but that she didn't as the landlord had applied.

The tenant commented that the rent was late some months as the landlord insisted on cash payments from her and the rental office is only open Monday through Friday from 10AM to 12 noon. The tenant stated that as she works part-time and has 2 children to take care of it is not always feasible for her to be at home when the office is open.

The landlord did state that there is a mail slot that the tenant could put her rent through but the tenant balked at this suggestion as she has had one issue where the landlord stated she had not paid her rent and she had to find her receipt to prove that she had. The tenant expressed concern about putting cash payments in the mail slot and not having a receipt issued at the time of payment.

The tenant acknowledged that she had not paid the October rent and stated that this was due to the landlord not fixing items in the rental unit. The tenant was advised in this hearing that rent should never be withheld and that the October rent is to be paid in full no later than 5PM, October 28, 2011.

The landlord in this application is seeking an order of possession.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for cause and did not apply for dispute resolution to dispute the notice.

However as the landlord took receipt of rent monies from the tenant after issuance of the notice and did not provide the tenant with a receipt stating *'for use and occupancy only, does not reinstate tenancy'*, (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy and must serve the tenant a new notice to end tenancy for cause.

The landlord's 1 month notice to end tenancy for cause dated August 19, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

The tenant however clearly understands that should the rent be paid late again, that the landlord is at liberty to issue a new 1 month notice to end tenancy for cause and that the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

The tenant also clearly understands that it is her responsibility to find a way to get the rent to the landlord on the first of each month and avoid any future late rent payments; IE: direct deposit or pre-arranged day and time to meet with the landlord. The tenant is to pay the October 2011 rent no later than October 28 at 5PM.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's 1 month notice to end tenancy for cause dated August 19, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

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: October 25, 2011.

Residential Tenancy Branch