



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's Advocate said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery December 21, 2011. Based on the evidence of the Tenant and the Advocate, 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 August 8, 2011 as a month to month tenancy. Market rent is \$510.00 and the Tenant pays a subsidized rent in the amount of \$410.00. Rent is due on or before the 1st day of each month. The Tenant paid a security of \$250.00 on August 8, 2011.

The Landlord said the Tenant was served a 1 Month Notice to End Tenancy for Cause dated December 15, 2011 because the Tenant was repeatedly late with the rent payment. The Landlord said the Tenant paid the rent late on September 22, 2011, October 16, 2011, November 2, 2011 and on December 14, 2011. The Landlord continued to say the Tenant paid the rent on time for August, 2011 and for January, 2012. The Landlord continued to say the Tenant has waited for the last minute to pay the rent and has not talked with the Landlord until the Landlord issued a Notice to End Tenancy. The Landlord said they want the Notice to End Tenancy to stand and they would like to end the tenancy on January 31, 2012 as that is the effective vacancy date on the Notice to End Tenancy.

The Tenant said that he would like to continue the tenancy and he has fixed the problem of late rent payments. The Tenant said he suffers from depression and as a result he is forgetful and that is the reason he has made his rent payments late. He said he has made an arrangement with this Advocate K.B. to help him pay his rent on time.

As well the Tenant offered the Landlord to make an arrangement with the Ministry to make direct deposits to the Landlord's account so that the rent would not be late again. The Landlord said she did not take rent payments by direct deposit as there system was set up for automatic withdrawals. The Tenant's Advocate said this is what the problem is, because the Tenant would forget when the rent was due, he would not check that there was enough money in his account to pay the rent when it was due. Consequently when the Landlord's automatic withdraw was taken it would show that the Tenant did not have enough funds in his account to pay the rent. The Tenant's Advocate said the Tenant has now made an arrangement with her to control the Tenant's bank account to ensure funds are available to pay the rent on time each month. The Tenant's Advocate said they set up the system for the payment of the January rent and the Tenant's January rent was paid on time. Both the Tenant and the Tenant's Advocate said the problem of paying the rent late is fixed and they both requested the Landlord to continue the tenancy.

The Landlord said she had no other complaints about the Tenant, but the Landlord was unwilling to continue the tenancy and they requested the Notice to End Tenancy dated December 15, 2011 with an effective vacancy date of January 31, 2012, to stand in effect.

The Tenant and the Tenant's Advocate stated the problem of the Tenant's late rent payments is due to his health conditions and now they believe the problem is fixed or the option of direct deposit from the Ministry would ensure the rent payment is on time.

Analysis

From the affirmed testimony of both parties it was agreed the Tenant was late with his rent payment for September, October, November and December, 2011. Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions. Consequently the Landlord is justified in issuing the Notice to End Tenancy for the cause of repeatedly late rent payments. The Tenant has made provision to fix the problem of his late rent payments and for January, 2012 his payment was on time. The Tenant requested the Landlord to continue the tenancy with a system that would ensure the rent was paid on time, but the Landlord declined the Tenant's offer and Landlord said she wanted to end the tenancy on the effective date of the Notice to End Tenancy, January 31, 2012. The Landlord did not ask for an Order of Possession.



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I find the Tenant may have fixed the problem of paying the rent late but he has not established grounds to cancel the Notice to End Tenancy dated December 15, 2011 based on the evidence. The Tenant agrees he was late 4 months out of the 6 month of the tenancy. As well the Tenant has proposed an arrangement to continue the tenancy to the Landlord and the Landlord has declined that proposal. As a result I dismiss the Tenant's application as the Tenant has not established grounds to cancel the Notice to End Tenancy dated December 15, 2011.

Conclusion

I dismiss the Tenant's application and order the 1 Month Notice to End Tenancy for Cause dated December 15, 2011, with an effective vacancy date of January 31, 2012, to stand in full effect.

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