



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 5, 2012 and to recover the filing fee for this proceeding. The Parties confirmed at the beginning of the hearing that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2012 was cancelled by the Tenant's payment of the rent arrears within the 5 days granted.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on November 1, 2008. The Tenant's rent is subsidized and her portion of the rent was \$160.00 from February 1, 2010 to June 30, 2011, \$457.00 from July 1 – November 30, 2011 and \$383.00 as of December 1, 2011. Rent is payable in advance on the 1st business day of each month.

The Landlord's agent, L.M., said the Tenant made 6 late rent payments during the period, January – September 2010, and as a result, on September 16, 2010 another agent for the Landlord advised the Tenant verbally (and again in writing on September 24, 2010) that rent had to be paid on time and that failure to do so would result in her tenancy ending. The Landlord's agent said the Tenant made a further 7 late rent payments in 2011 and for each occurrence she was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord's agent said he did not consent to the Tenant making her rent payments late. The Landlord's witnesses each gave evidence denying that they had agreed to the Tenant paying her rent late. Consequently, the Landlord's agent said on January 5, 2012, he served the Tenant with a One Month Notice to End Tenancy for Cause dated January 5, 2012 by registered mail. The sole ground checked off on the notice was that the Tenant was repeatedly late paying rent.

The Tenant admitted that she made the late rent payments as alleged by the Landlord however she argued that in each instance she made arrangements with the Landlord's agents to pay it late. In particular, the Tenant claimed that in 2011 when she knew she

would be late, she would contact the Landlord's agent, L.M., and advise him that her rent payment would be late and would also advise him when she would pay it. The Tenant said she was advised by the Landlord's agent that he was serving her with a 10 Day Notice "as an administrative requirement" and that she could ignore it if she paid the rent arrears within 5 days.

Analysis

Section RTB Policy Guideline #38 (Repeated Late Payment of Rent) says that three late payments are the minimum number sufficient to justify a notice under this provision. In exceptional circumstances, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent. An example of an exceptional circumstance would be where an unforeseeable bank error has caused the late rent payment.

Based on the undisputed evidence of the Parties, I find that the Tenant made late rent payments for April, July, August, September, October, November and December 2011. I also find for the following reasons that these payments were not condoned by the Landlord. Firstly, I find that the Tenant was given a written warning on September 24, 2010 that any further late payments would result in her being served with a One Month Notice to End Tenancy for Cause. I find that despite the Tenant's assurances to the Landlord that she would pay her rent on time, she was late a further 7 instances in 2011. Although the Tenant argued that the Landlord accepted her late payment arrangements, I find that the weight of the evidence contradicts this assertion. In particular, the Landlord's witnesses all gave evidence that they never made any arrangements with the Tenant to pay rent late. The Landlord's agent, L.M. also denied that he made any arrangements with the Tenant but instead claimed he followed the procedure required under the Act by issuing the Tenant a 10 Day Notice on each occasion when her rent was late.

I find that the Tenant was under the mistaken belief that as long as she advised the Landlord that she would be making a late rent payment (within the 5 days granted under s. 46 of the Act) and the Landlord accepted the late payment then the Landlord must have agreed to these arrangements. However, a 10 Day Notice to End Tenancy does not operate to extend the time to pay the rent and in the absence of any other evidence from the Tenant, I find that there is insufficient evidence to conclude that the Landlord agreed to the Tenant making her rent payments late.

The Tenant also gave evidence at the hearing of her anxiety disorder as well as employment and relationship issues that she said have contributed to her inability to pay her rent on time. However, I find that these are not the kind of circumstances that are referred to as "exceptional" under RTB Policy Guideline #38 set out above. The example used in that guideline indicates that it must be a circumstance that cannot be anticipated and is beyond the control of a party. In this case, I find that there is

insufficient evidence to conclude that the Tenant's failure to pay her rent on time was due to factors beyond her control or that could not be anticipated. For example, the Landlord's witness, L.M. gave evidence that she encouraged the Tenant to have her rent payments paid directly to the Landlord by BC Benefits in order to avoid making late rent payments each month however the Tenant did not do so.

For all of the above reasons, I find that there are grounds for the One Month Notice to End Tenancy for Cause dated January 5, 2012 and the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord did not request any Orders at the hearing.

Conclusion

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause dated January 5, 2012 and to recover the filing fee for this proceeding is dismissed without 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*.

Dated: February 06, 2012.

Residential Tenancy Branch