



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; FF

Introduction

This Hearing was scheduled to hear the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued January 5, 2012.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Notice of Hearing documents and copies of her documentary evidence by handing them to an agent of the Landlord's on January 16, 2012.

The Landlord provided late evidence to the Tenant and to the Residential Tenancy Branch on February 1, 2012. This evidence was not considered and the Landlord's agents were invited to provide verbal testimony with respect to the contents of their documentary evidence.

Issue(s) to be Determined

Should the Notice be cancelled?

Background and Evidence

The Landlord gave the following affirmed testimony:

- There is no written tenancy agreement between the parties.
- This tenancy began in June, 2010.
- Monthly rent is \$1,700.00 due on the first day of each month.
- The Tenant has been late paying rent for May, August, September, October and November, 2011, as follows:

Date due	Date paid, and comments
August 1, 2011	August 26, 2011
September 1, 2011	Cheque returned NSF on September 7, 2011

October 1, 2011	October 26, 2011 Tenant paid rent for May, September and October, 2011
November 1, 2011	25 November, 2011

The Tenant PT gave the following affirmed testimony:

- The Tenant did not dispute the dates the Landlord provided but stated that rent was not due on the first of the month. The Tenant testified that the rental unit houses people who are recovering from drug addiction. She testified that rent was due on the third or last Wednesday of every month, which is when she receives money from the Ministry.
- The Tenant testified that since December, 2011, she has been paying rent on the first day of each month.

Analysis

The Landlords seek to end the tenancy because the Tenant is repeatedly late paying rent.

I do not accept the Tenant's submission that rent was due on an indeterminate date each month. Based on the testimony of both parties, I find that rent was due on the first day of each month.

Section 47 of the *Residential Tenancy Act* (the "Act") allows a landlord to end a tenancy for repeated late payment of rent. Residential Tenancy Branch Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice to end the tenancy. I find that the Tenant has been late paying rent on five occasions since April 2011, and therefore I dismiss the Tenants' application to cancel the Notice to End Tenancy.

The Tenant has not been successful in her application and is not entitled to recover the cost of the filing fee from the Landlord.

The Notice indicates an effective end-of-tenancy date of February 9, 2012. This is incorrect. Pursuant to the provisions of Section 47 of the Act, I find that the effective end-of-tenancy day is February 29, 2011. Pursuant to the provisions of Section 53(1) of the Act, the notice is deemed to be changed to reflect the accurate end-of-tenancy date.

I find that the Notice is a valid notice to end the tenancy. The Tenant must move out of the rental unit by 1:00 p.m., February 29, 2012.

The Landlord's agents did not ask for an Order of Possession.

Conclusion

The Tenants' application is dismissed without leave to re-apply. This Tenant must vacate the rental unit by **1:00 p.m., February 29, 2012.**

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