



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, ERP

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Cause, and for an order to require the landlord to make emergency repairs and repairs.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for an order requiring the landlord to make repairs and emergency repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for that order, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the 1 Month Notice to End Tenancy?

Background and Evidence

This month to month tenancy began on September 8, 2009, current monthly rent is \$1,100.00 payable on the first day of the month and the tenant paid a security deposit of \$525.00 at the beginning of the tenancy.

The parties agreed that the tenant has a bank account at the same bank as the landlords and that he now pays rent through a real time transfer.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlords proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause, pursuant to section 47 of the Residential Tenancy Act (the "Act"). The Notice was dated February 5, 2012, and was served via personal delivery on that date, listing an effective end of tenancy date of March 6, 2012.

Under the Act, a notice under section 47 must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. **Thus I note the effective move out date indicated on the Notice is ineffective and, pursuant to Section 53 of the Act, automatically corrects to March 31, 2012.**

The cause listed on the Notice stated the tenant was repeatedly late in paying rent.

The landlords testified and supplied documentary evidence that the tenant has made fourteen late payments of rent since August 2010, as well as not having made the full payment as yet for December 2011. The landlords' evidence indicated that the tenant has made late payments of rent for the last four consecutive months.

The landlords also supplied copies of their pertinent bank information and text messages to the tenant.

In response, the tenant could not dispute the landlord's testimony, but stated that any late payment was due to the first day of the month falling on a holiday or weekend, which prevented him from making a transfer to the landlords' account on the first day of the month. The tenant submitted that if this occurred, he would make a payment on the next business day the bank was open.

The tenant also submitted that he always paid the rent within a few days of the first day of the month, and when so doing, communicated this to the landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the Residential Tenancy Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. I find the landlord established, through testimony and evidence and the tenant's concurrence, that the tenant has made fourteen late payments of rent since August 2010 and for the prior four consecutive months, including the month the Notice was issued.

Conclusion

I therefore find the landlords submitted sufficient evidence to establish that the tenant was repeatedly late in paying rent. As I have found that the landlord has proven the cause listed on the Notice, I **dismiss** the tenant's application to cancel the Notice, **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: March 02, 2012.

Residential Tenancy Branch