



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on March 25, 2012 and be allowed to reduce rent for loss of services.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The landlord requests an order of possession if the tenant's application is dismissed.

Issue(s) to be Decided

Should the one month notice to end tenancy for cause be cancelled?

Should the tenant be allowed to reduce rent for loss of services?

Background and Evidence

The tenancy began on June, 1, 2004. Rent in the amount of \$840.00 was payable on the first of each month. A security deposit of \$360.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2012.

The reason stated in the notice to end tenancy was the tenant is repeatedly late paying rent.

The landlord testified that the tenant has been late paying rent almost every month. The landlord states the tenant pays his rent by direct deposit into his bank account and the transaction details from the bank records show the following history of the tenants rent payment.

- November rent, paid on November 14, 2011
- December rent, paid on December 6, 2011
- January rent, paid January 6, 2012
- February rent, paid February 10, 2012
- March rent, March 6, 2012 the tenant paid a portion of rent and paid the balance on March 19, 2012.
- April rent is still outstanding.

The tenant testified that he had been laid off from his job for a period of time and was working as a self employed contractor. The tenant states he also had personal family matters which he was dealing with at the time. The tenant recognizes he has been late making rent payments.

Analysis

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

After considering all of the oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late with rent.

Section 38 of the Residential Tenancy Policy Guidelines states that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

In this case the tenancy agreement states rent is due on the first of the month. The evidence of the landlord indicates the tenant has been late paying rent for an extended period of time far exceeding the minimum requirement of three. I find the tenant is repeatedly late paying rent.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on March 25, 2012. The tenancy will end on April 30, 2012, in accordance with the Act.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **April 30, 2012, at 1:00 P.M.**

In the tenant's applications the tenant was seeking to be allowed to reduce rent for loss of services, as the tenancy has ended in accordance with the Act, the tenant's application to reduce rent is dismissed.

As the tenant has been unsuccessful with their application the tenant is not entitled to recover the cost of filing the application from the landlord.

This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is dismissed.

The tenant's application to be allowed to reduce rent is dismissed.

The landlord is granted an order of possession.

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: April 19, 2012.

Residential Tenancy Branch