



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 46;
2. An Order to recover the filing fee for this application - Section 72; and
3. Other.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Background and Evidence

The tenancy began on September 1, 2010. Rent in the amount of \$1,300.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00. The Landlord states that the Tenant has been repeatedly late paying rent and provided documentation of the payment history of the Tenant since the beginning of the tenancy. The Tenant confirms that on March 27, 2012, the Landlord served the Tenant with a one month Notice to End Tenancy for Cause (the “Notice”). There is no dispute that the cause listed on the notice is the Tenant’s late payment of rent.

The Tenant does not dispute making late payments and states that such late payments have been made since the onset of the tenancy. The Tenant states that the real reason for the Landlord ending the tenancy is because they are in a dispute over the payment of hydro, which the Tenant states has not been paid since the onset of the tenancy. The Tenant states that the Landlord has not ever served the Tenant with a 10 day

Notice to End the Tenancy for unpaid rent or utilities. It is noted that the Landlord has not made an application in relation to the payment of Hydro by the Tenant. The Tenant states that the "Other" category set out above is in relation to the hydro dispute.

The Landlord states that over the 19 months of the tenancy, the Tenant has paid rent on time for 11 months in total and that the Landlord has been lenient in the past with late rent payments but has noted that the most recent late rent payments for the period December 2011 and March 2012 inclusive were increasingly short on those portions of rent paid on time.

The Landlord's Witness states that he attended a meeting with the Parties to discuss the late payments and saw the documentation of amounts owing, including amounts owing for hydro.

The Landlord states that the Tenant has paid rent for May 2012 and that the Landlord issued a receipt for use and occupancy only. The Landlord requests an Order of Possession for May 31, 2012.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the undisputed evidence of the Parties and considering the Landlord's documentation of when the rents were paid late, I find that the Tenant has been late paying the rent for the period December 2011 to March 2012, inclusive and that the Notice is therefore valid. Although the Tenant states that the real reason for the Notice is due to a dispute over hydro payments, I find this argument to be irrelevant to a determination of the Notice's validity. These findings were provided orally at the Hearing, following which the Landlord requested the Order of Possession. Given this request, I find that the Landlord is entitled to an Order of Possession effective 1:00 p.m. on May 31, 2012.

Conclusion

The Notice is valid.

I Grant an Order of Possession to the Landlord effective 1:00 p.m. May 31, 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: May 03, 2012.

Residential Tenancy Branch