



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, confirmed service of the application for dispute resolution and hearing documents and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to have the Notice to End Tenancy cancelled?
2. If not, has the Landlord attended this proceeding and orally requested an Order of Possession?

Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on November 19, 2011. Rent is payable on the first of each month in the amount of \$675.00 and on November 19, 2011 the Tenant paid \$337.50 as the security deposit.

The male Landlord affirmed that the Tenant has been paying rent late since the start of this tenancy which is supported by his evidence which included copies of: the tenancy agreement; five 10 Day Notices to End Tenancy for unpaid rent; receipts which prove rent has been paid late; a warning letter dated December 7, 2011 informing the Tenant if he continues to pay his rent late it would be grounds for ending the tenancy; a copy of the 1 Month Notice to End Tenancy for Cause for repeated late payment of rent; and proof of service documents.

The Landlord advised the 1 Month Notice was issued and served to the Tenant on April 16, 2012 when it was placed inside the Tenant's mailbox. The Tenant confirmed receiving the 1 Month Notice on April 20, 2012 which is the date he found it in his mailbox. He made application to have the notice cancelled on April 27, 2012.

The Tenant affirmed he has been paying his rent late and he was not previously aware that his tenancy could be ended as result of late payments. He noted that although rent has been late he has always managed to get it paid. He advised that he has struggled getting on his feet but that things are settling down now so he was here to request some leniency to continue with his tenancy.

The Landlord requested that the 1 Month Notice be upheld for repeated late payment of rent and an Order of Possession be granted for May 31, 2012.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by the Landlord. The evidence supports the Tenant paid his rent late for each of the five months this tenancy has been in effect.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective May 31, 2012, the effective date of the 1 Month Notice.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

I HEREBY ISSUE the Landlord an Order of Possession. This Order is legally binding and must be served upon the Tenant.

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 22, 2012.

Residential Tenancy Branch