



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 one month notice to end tenancy for cause issued on May 26, 2012.

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.

Issue(s) to be Decided

Should the notice to end tenancy issued on May 26, 2012, be cancelled?

Background and Evidence

The tenancy began on November, 1, 2010. Rent in the amount of \$1,000.00 was payable on the first of each month. No security deposit was paid.

The parties agreed 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 June 30, 2012.

The reason stated in the notice to end tenancy was that the:

- Tenant is repeatedly late paying rent

The landlord's agent testified that the tenant is repeatedly late paying rent.

The landlord's agent testified they had to request rent for December 2011 and it was paid on December 2, 2011. The landlord's agent stated they had to request rent for January 2012, and it was paid on January 4, 2012. The landlord's agent stated they had to request rent for March 2012 and the response was they had no money and it was

paid on March 5, 2012. Filed in evidence are the landlord's bank statement and text messages between the parties.

The tenant testified that he was not in the rental unit during this time as he had moved out.

The landlord's agent has requested verbally, an order of possession if the tenant is not successful with his application. The landlord's agent consents to extend the effective date of the notice to July 31, 2012.

Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the:

- Tenant is repeatedly late paying rent

In this case, the tenant was not residing in the rental unit, however, under the terms of the tenancy agreement the tenant was responsible to ensure rent was paid on the first of each month.

Policy guideline 38 states - Three late payments are the minimum number sufficient to justify a notice under these provisions.

As, the landlord has proven the tenant was late on three occasions. I find the notice to end tenancy is a valid notice under the Act.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on May 26, 2012. The tenant is not entitled to recover the filing fee from the landlord.

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. The landlord's agent has agreed to extend the effective date of the notice. Therefore, I grant the landlord an order of possession effective **July 31, 2012, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

The tenant has agreed to provide the landlord with a copy of the key to the rental unit, within the next 14 days.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause issued on May 26, 2012, 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: June 21, 2012.

Residential Tenancy Branch