



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a ten day notice to end tenancy for unpaid rent issued on June 5, 2012 and to cancel a one month notice to end tenancy for cause issued on June 5, 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issue

On June 5, 2012, the tenant was served with a ten day notice for unpaid rent. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The parties agreed the tenant paid the outstanding rent within five days of receiving the notice. Therefore, the ten day notice to end tenancy issued on June 5, 2012, is no longer valid and is of no force or effect.

Today's hearing proceeded on the one month notice for cause issued on June 5, 2012.

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 for cause issued on June 5, 2012, be cancelled?

Background and Evidence

The tenancy began on October 1, 2005. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

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 July 31, 2012.

The reason stated in the notice to end tenancy for cause was:

- The tenant is repeatedly late paying rent

The landlord testified the tenant has been late paying rent five times in the last eight months. Rent for November 2011, was paid on November 4, 2012. Rent for January 2012, was paid on January 6, 2012. Rent for April 2012, was returned for insufficient funds and paid on April 19, 2012. Rent for May 2012, was paid in two payments, without the consent of the landlord. Rent for June 2012, was again split in two payments and the tenant was served with a notice to end tenant for unpaid rent, which the tenant paid the outstanding rent within five days.

The tenant testified that each time she was late with rent she left a note for the landlord. The tenant testified the bank made an error for the April 2012, rent and she rectified the problem as soon as it came to her attention.

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:

- The tenant is repeatedly late paying rent

Under section 38 of the Residential Policy Guidelines three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In this case, the landlord has proven the tenant was late paying rent on five occasions. Even if I accept the tenant's evidence that on one of those occasions a banking error was made by the bank, the landlord still has provided sufficient evidence to prove the requirements under section 38 of the Policy Guidelines. Therefore, I find the tenant has been repeatedly late paying rent.

As a result, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on June 5, 2012. The tenancy will end on July 31, 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 **July 31, 2012 at 1:00 P.M.** 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 issued on June 5, 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: July 05, 2012.

Residential Tenancy Branch