



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence, with one exception. The tenant stated that he did not receive the landlord's evidence in a timely manner and did not have time to prepare a response. I determined that the hearing could proceed as the tenant would be able to supply testimony in rebuttal of the evidence. The tenant raised no further issue.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that the two tenants are referred to in the third person masculine singular due to the male tenant providing the testimony.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

This one year, fixed term tenancy began on December 15, 2011, monthly rent is \$1975.00 and the tenant paid a security deposit of \$987.50 at the beginning of the tenancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated July 14, 2012 and was delivered by the landlord to the tenant's mailbox. The landlord was uncertain of the date she delivered the Notice; however I accept that the tenant received the Notice within 3 days as his application to cancel the Notice was filed on July 17, 2012. The effective end of tenancy date listed on the Notice was August 31, 2012.

The causes as stated on the Notice alleged that the tenant is repeatedly late in paying rent, has caused extraordinary damage to the rental unit, and has not done required repairs of damage to the rental unit.

The landlord's relevant evidence included 3 photos of the driveway at the rental unit, banking information and the tenancy agreement.

In support of their Notice, the landlord testified the tenant has made 3 late payments of rent since the tenancy began, in December 2011, January and July 2012.

The landlord said that two rent cheques were returned to her due to non sufficient funds and on another instance, she was asked not to deposit the cheque. The funds were brought over a few days later.

As to the alleged damages, the landlord said that the driveway was damaged due to an oil leak from the tenant's car. According to the landlord the driveway now needs resurfacing.

When questioned, the landlord confirmed that the driveway was still being used.

In response, the tenant said that the two cheques were returned due to bank error. Specifically, the tenant said his paycheque is deposited directly into his account every Tuesday; however as Tuesday, July 3 was directly after a holiday, his cheque for that week was not credited to his account until midnight on July 4, which caused the cheque to be returned. The tenant stated that the bank acknowledged the error and reversed the charge to his account.

The tenant said the December rent, for that half of the month, was paid in cash on that date as it was the first day of the tenancy and that he did not receive a receipt.

The tenant said that there was an oil stain on the driveway due to his car breaking down; however the tenant has now replaced the car and the new car does not leak.

The tenant said the driveway has a fair bit of age and is showing natural wear and tear, with grass growing in some of the cracks. The tenant said the driveway is still being used.

Analysis

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

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late in paying rent, has caused extraordinary damage to the rental unit and has not done required repairs of damage to the rental unit.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The landlord established that the tenant made two late payments in January and July 2012, but failed to submit evidence to support that a third payment was late. Additionally, I accept that an unforeseeable bank error led to the July payment being made late. Therefore I find the landlord submitted insufficient evidence to establish that the tenant was repeatedly late in paying rent.

As to the remaining listed causes, I find the landlord submitted insufficient evidence to support that the tenant caused extraordinary damage to the rental unit or has not done required repairs of damage.

As to the alleged extraordinary damage, the appearance of the driveway is esthetic in nature, but the driveway is still fully functional and usable. I do not find an oil stain in the driveway to be extraordinary damage or damage.

I therefore find that the landlord has submitted insufficient evidence of extraordinary damage or required repairs of damage.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated July 14, 2012, for an effective move out date of August 31, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

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: August 09, 2012.

Residential Tenancy Branch