



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated July 31, 2012, purporting to be effective August 31, 2012. Both parties appeared and each gave testimony in turn.

Issue(s) to be Decided

Should the landlord's One-Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy.

Background and Evidence: One-Month Notice for Cause

The tenancy began in July 1998. The current rent is \$1,319.00 and the landlord testified that it is due in advance on the last day of the previous month preceding the applicable rental period. No copy of the tenancy agreement was in evidence.

Evidence was submitted including a copy of a One-Month Notice to End Tenancy for Cause, a document titled, "*Late Payment Detail*", copies of correspondence and copies of "Late Payment Notice" slips issued to the tenant.

The landlord testified that although the tenancy agreement specifies that the rent is due on the last day of the month preceding the rental period, the tenant has repeatedly paid the rent late and there were 9 incidents of late payment during the past year.

The tenant acknowledged that rent is due on the last day of the month, but pointed out that the landlord has accepted that the tenant paid late in exchange for late payment fees of \$25.00 per incident. The tenant is requesting that the One Month Notice to End Tenancy for Cause be cancelled on that basis.

Analysis:

In regard to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that this did transpire. I make no finding with respect to whether or not the tenancy term requiring the tenant to pay rent prior to the day that the rental period starts, that being the last day of the month preceding the rental period, is a term compliant with the Act.

I find that the tenant was given notices and late payment charges, but the chronically late payments continued. I find it evident that the tenant believed that the only consequences of this practice would be paying additional fees.

I find that the tenant's position that late payments were implicitly accepted by the landlord by virtue of the fact that the landlord had not taken further steps during this 15-year tenancy, may have some merit. Moreover, not having the tenancy agreement before me, I am not able to review the specific tenancy term that the One-Month Notice to End Tenancy for Cause purports to enforce.

I find that the landlord should have issued a more recent warning letter to the tenant letting the tenant know that, although late payments were overlooked in the past the practice would no longer be tolerated and the tenancy could be ended if it continued.

Section 26 of the Act specifically requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Under section 47, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause.

If it was not clear to the tenant that late payments would jeopardize the continuation of the tenancy before now, I will put this misunderstanding to rest. The tenant should now be aware that paying the rent late is a serious violation of both the Act and that the tenancy agreement and if repeated could result in termination of the tenancy under section 47. With this caution, I grant the tenant's request to cancel the One-Month Notice to End Tenancy for Cause dated July 31, 2012.

I also find it necessary to order that the landlord provide a copy of the original tenancy agreement to the tenant.

Conclusion

Based on the evidence and testimony, I hereby cancel the One-Month Notice to End Tenancy dated July 31, 2012. In doing so, I caution the tenant that repeated late payment of rent is clear justification under section 47 to terminate the tenancy.

I hereby order the landlord to provide the tenants with a copy of their signed tenancy agreement that began in July 1998.

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: September 06, 2012.

Residential Tenancy Branch