



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Preliminary Issues

Upon review of the application for dispute resolution the Agent confirmed the correct spelling of his name and requested that his name be removed from this proceeding. He later confirmed that he is Agent for the Landlord.

With the agreement of all parties I amended the style of cause to include the Agent's first name and identified him as an Agent, pursuant to section 64 (3)(c) of the *Act* which stipulates the director may amend an application for dispute resolution.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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. Should the 1 Month Notice to end tenancy for cause, issued October 18, 2012, be cancelled?

Background and Evidence

The Tenants did not submit documentary evidence in support of their application.

The Landlord submitted 26 pages of documentary evidence which included, among other things, copies of: the tenancy agreement, the 1 Month Notice to end tenancy for

cause issued October 18, 2012, 4 NSF cheques issued by the tenants between March 2012 and August 2012, and three 10 Day Notices to end tenancy for unpaid rent.

The parties agreed they entered into a fixed term tenancy that began on June 1, 2006 and switched to a month to month tenancy after May 31, 2007. The current monthly rent is payable on the first of each month in the amount of \$1,206.00 and on June 1, 2006 the Tenants paid \$525.00 as the security deposit plus \$525.00 as the pet deposit.

The Landlord and Agent affirmed that the Tenants' rent payments for March 1, 2012, May 1, 2012, June 1, 2012, and August 1, 2012, were returned NSF causing their rent to be paid late. Three 10 Day Notices were issued (February 6, 2012, March 15, 2012, and October 6, 2012) and were subsequently cancelled when rent was paid within the five day period.

The Agent advised that the 1 Month Notice was issued and he personally served it to the Tenants' residence on October 19, 2012. The Tenant, J. H., confirmed receipt of the Notice.

The Tenant E. L. acknowledged that there were NSF cheques and argued they were the result of a banking error and an inactive account. He stated that the cheques drawn on this inactive account were replaced with new cheques but the Landlord kept cashing the old cheques causing them to be returned.

The Tenant J. H. submitted that they requested the Landlord not cash the old cheques, through conversations with a man they thought to be the Landlord's property manager. She went on to explain that they began to pay their rent in cash and found this method was restricted because the Landlord removed the payment drop box that used to be accessible after business hours.

The Landlord and Agent advised that they did not wish to work towards reinstating this tenancy as they have had to deal with seven late payments for this year alone and it is their right to receive rent in accordance with the tenancy agreement and not have to chase tenants for rent. They refuted the Tenants' testimony pointing out that the NSF cheques were not in consecutive months, rather there were months where rent was paid on time in-between months where there was NSF or late payments. The Agent requested that I proceed with upholding the Notice to end this tenancy.

Each party was given the opportunity to provide their rebuttal and closing comments at which time the Agent requested that the decision be faxed to their office. A discussion followed whereby I informed the Tenants I would be dismissing their application and upholding the Notice. The Tenants requested that I mail them a copy of the decision.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by the Landlord. The evidence supports the Tenants paid their rent late for six months in 2012 (February, March, May, June, August, and October, 2012).

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 Tenants 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 as rent was late in a least six of the past ten months. Therefore, the 1 Month Notice is upheld and the Tenants' application to set aside the Notice is dismissed.

The Landlord and Agent attended the hearing and requested that I uphold the Notice. Neither one of them made an oral request for an Order of Possession.

Conclusion

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

The 1 Month Notice to End Tenancy issued on October 18, 2012 is of full force and effect. Accordingly, this tenancy ends on the effective date of the Notice, **November 30, 2012.**

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: November 20, 2012.

Residential Tenancy Branch