



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, 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 issued by the landlord. The hearing was also convened to hear the landlord's application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause that had been issued on September 27, 2012.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause or should it be cancelled?

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the One Month Notice to End Tenancy for Cause dated September 27, 2012 with effective date of October 31, 2012, copies of bank records and a receipt for payment of \$1,013.00 rent by the tenant for the month of November 2012, with the notation, "*for use and occupancy only*".

The tenancy began on January 1, 2010 and current rent is \$1,013.00. A security deposit of \$487.50 was paid on April 30, 2012.

The One Month Notice to End Tenancy for Cause in evidence indicated that:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

(ii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

(iii) put the landlord's property at significant risk.

- The tenant has engaged in illegal activity that has , or is likely to
 - (i) damage the landlord's property.
 - (ii) adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.
 - (iii) jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that the rent was due on the first day of each month, as indicated in the tenancy agreement in evidence. The landlord testified that the tenant has repeatedly made late deposits of the rent. The landlord made reference to bank records in evidence that verified rent deposits by the tenant were not made on the first day of the month on several occasions.

The tenant acknowledged his failure to deposit the rent funds on the first day of each month and explained that this occurred due to his the pay schedule followed by his employer.

The landlord testified that a One-Month Notice to End Tenancy for Cause was served on September 27, 2012 to end the tenancy on October 31, 2012. According to the landlord, the tenant had already deposited the rent payment for November 2012 into the landlord's bank account, prior to the hearing today. The landlord testified that they did not intend to re-instate the tenancy, nor to extend the date for ending the tenancy, so they issued a receipt to the tenant, "*for use and occupancy only*". The landlord is therefore requesting an order of possession as soon as possible based on the stated effective date indicated on the Notice. The landlord testified that they are aware that, if the tenancy is ended prior to the end of November 2012, the tenant must be reimbursed some of the rent already paid for November, to be calculated on a pro-rated basis.

Analysis

The burden of proof is on the landlord to show that the One-Month Notice to End Tenancy for Cause was warranted.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

In this instance, I find that the tenant did not pay the rent when rent was due on the first day of the month on numerous occasions. With respect to the Notice to terminate the tenancy for cause, I find that, because the tenant violated the Act by repeatedly paying the rent late, the One-Month Notice to End Tenancy for Cause was supported under the Act and the landlord is entitled to an Order of Possession based on this Notice which gave October 31, 2012 as the effective date for ending the tenancy.

I find that the landlord had only accepted payment of rent for the month of November 2012 "*for use and occupancy only*" and, as such, this payment did not function to reinstate the tenancy nor to extend the date for ending the tenancy.

Accordingly I find that the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause that is being upheld. I therefore grant the landlord an Order of Possession effective 2 days after service, as requested by the landlord.

As the landlord has been successful in its application, I find that the landlord is entitled to be reimbursed the \$50.00 cost of the application and I order that this amount be retained from the tenant's security deposit, leaving \$437.50 still being held on behalf of the tenant. The tenant's remaining deposit must be administered in accordance with section 38 of the Act.

Conclusion

The tenant's application was dismissed and the landlord was granted an Order of Possession effective 2 days on service.

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 06, 2012.

Residential Tenancy Branch