



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNC MNDC FF O

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant applied to cancel a Notice to End Tenancy for Cause, to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee, and "other" although details of "other" were not made clear in the tenant's application for dispute or related amendments.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord confirmed that he received three evidence packages from the tenant and had the opportunity to review the evidence prior to the hearing. The landlord confirmed that he failed to serve the tenant with his evidence. As a result, the landlord's documentary evidence was excluded from the hearing as it was not served in accordance with the Rules of Procedure.

Preliminary and Procedural Matter

The tenant amended her original application twice, the first time to add disputing a 1 Month Notice to End Tenancy for Cause and the second time to seek a monetary order. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy for Cause. I find that her other claims in her Application for Dispute Resolution are not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy for Cause and the

tenant's application to recover the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

A verbal month to month tenancy agreement was entered into by the parties on November 1, 2012. The parties agree that monthly rent on November 1, 2012 was \$700.00 and due on the first day of the month. A security deposit of \$300.00 was paid by the tenant at the start of the tenancy.

On January 8, 2013, the tenant confirmed receiving a 1 Month Notice to End Tenancy for Cause (the "Notice") with an effective vacancy date of February 7, 2013, which corrects automatically under the *Act* to February 28, 2013. The tenant disputed the Notice on January 8, 2013. The landlord listed the following reasons on the Notice:

1. Tenant is repeatedly late paying rent.
2. Tenant has allowed an unreasonable number of occupants in the unit.
3. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
4. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
5. Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
6. Tenant has assigned or sublet the rental unit without the landlord's written consent.

Regarding reason #1 listed above, the landlord confirmed that the tenant paid November 2012 rent on time on November 1, 2012. The landlord stated that December rent was paid on December 4, 2012 and January rent was paid on January 3, 2013. The tenant disputed that any rent payments were made late.

Regarding reasons #2 to #6 listed above, the landlord did not have any witnesses or documentary evidence to support any of these items listed on the Notice. The tenant disputed all six of the items being alleged by the landlord in the Notice. The landlord

claimed that the police attended the rental unit but had no evidence to corroborate his testimony.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

According to Residential Tenancy Branch Policy Guideline #38, a minimum of **three** late payments are required to establish repeated late payments of rent. The landlord confirmed that November 2012 rent was not late. The tenant disputes that December 2012 and January 2013 rent were paid late. As a result, the landlord has failed to meet the burden of proof to prove that the tenant was late paying the rent on three occasions. Therefore, **I dismiss** this portion of the Notice due to insufficient evidence.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. The landlord failed to provide any corroborating evidence regarding reasons #2 to #6 in the Notice. The landlord did not have any witnesses and his documentary evidence was excluded due to him failing to serve the tenants in accordance with the Rules of Procedure. As a result, once the tenant disputed all six reasons listed on the Notice and the landlord's testimony regarding the police attending, without further evidence to support the Notice, **I find** the landlord has failed to meet the burden of proof to support reasons #2 to #6 on the Notice listed above. Therefore, **I dismiss** the remainder of the Notice due to insufficient evidence.

As the landlord has failed to prove that the Notice was valid, **I set aside** the Notice. **I order** that the tenancy continues until ended in accordance with the *Act*.

As the tenant's application had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**. **I authorize** the tenant a one-time rent reduction in the amount of **\$50.00** from a future month's rent in full satisfaction of the recovery of the filing fee.

Conclusion

I set aside the 1 Month Notice to End Tenancy for Cause due to insufficient evidence. I order that the tenancy continues until ended in accordance with the *Act*.

I authorize the tenant a one-time rent reduction of \$50.00 in full satisfaction of the recovery of the filing fee as the tenant was successful with her application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 29, 2013