



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated January 26, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the One Month Notice to End Tenancy for Cause issued by the landlord?

The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence: One Month Notice

The tenancy began in February 2012. The current rent is \$1,250.00. A security deposit of \$625.00 and partial pet damage deposit of \$400.00 were paid.

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated January 26, 2013 showing an effective date of February 28, 2013. The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant had been repeatedly late in paying the rent.

The landlord testified that the One Month Notice was issued for because the tenant had been repeatedly late with the rent throughout the tenancy, the tenant breached a

material term of the tenancy agreement that was not corrected within a reasonable time, after being given written notice to do so and the tenant had failed to pay the pet damage deposit within 30 days.

The landlord testified that the tenant's rent for the month of May 2012 was paid 51 days late and rent for the month of June 2012 was paid 50 days late. In addition, the landlord stated that a portion of the rent for August 2012 was paid 20 days late and a portion of the rent for September 2012 was paid 5 days late. The landlord testified that there was fifth incident of late payment of rent, but this was permitted because of an address change.

The tenant acknowledged that the above rent was not paid on time for each of the months mentioned. The tenant made the following arguments:

- The rent was usually paid early;
- The late payments were due to financial circumstances beyond her control;
- There was a verbal agreement made between the tenant and the landlord allowing the tenant to pay the rent late;
- The landlord's failure to issue Ten Day Notices to End Tenancy for Unpaid Rent each month that the rent was not received on time should be seen as evidence supporting the tenant's allegation that the landlord was in agreement with the late payments;
- The amount paid late for two of the deficient months was minimal.

The tenant also stated that it would not be possible for her family to vacate the rental unit by the end of the month which was the effective date shown on the One-Month Notice to End Tenancy for Cause.

The landlord indicated that the written tenancy agreement requires that the rent be paid on the first day of each month and denied that there was any verbal agreement to permit late payments of rent.

Analysis:

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

I accept the landlord's and the tenant's verbal testimony that there have been repeated late payments of rent during this tenancy and I find that this fact justifies the One Month Notice to End Tenancy for Cause issued by the landlord.

Accordingly, I find that the tenant's application seeking to cancel the Notice must be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld the Notice to End 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.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service. This Order is final and binding and must be served on the Applicant tenant. It may be enforced by an application to the Supreme Court if necessary.

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: February 25, 2013

Residential Tenancy Branch

