



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the “notice”) issued on February 23, 2013.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the notice to end tenancy issued on February 23, 2013, be cancelled?

Background and Evidence

Rent in the amount of \$650.00 was payable on the first of each month.

Neither party provided a copy of the 1 month notice to end tenancy for cause. The parties agree that a one month notice to end tenancy for cause was issued on February 23, 2013, and was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- Tenant is repeatedly late paying rent.

The landlord testified that the tenant is deliberately continuing to pay his rent late. The landlord stated all the tenants pay rent to the building manager, except for this tenant as he just refuses to go. The landlord stated when he has made arrangement to meet the tenant to collect the rent he is never there. The landlord stated he has to make special trip to find the tenant and collect rent.

The landlord testified rent for January and February 2013, were late. Filed in evidence are receipts issued to the tenant indicting rent was late.

The landlord stated rent was paid on the following dates:

August rent was paid August 3, 2012,
September rent was paid September 4, 2012,
October rent was paid October 2, 2012,
November rent was paid on November 2, 2012,
December rent was paid on December 3, 2012,

The tenant did no dispute rent for January and February 2013, were late.

The tenant testified he does not pay rent to the building manager because she refuses to take the rent money from him as they have a personal conflict.

The tenant testified that he calls the landlord and asks him when he will be coming to the unit to collect the rent and often he does not attend until after rent is due. The tenant stated that on occasions he has been told by the landlord that he will be at the building on the first of the month, at noon hour to collect the rent, however, this sometimes has conflicted with his appointments and he was unable to attend.

The landlord denied the building manger refuses to take rent payments from the tenant.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Tenant is repeatedly late paying rent.

In this case, the reason the notice was issued was the tenant is repeatedly late paying rent.

Under the Policy Guidelines three late payments are the minimum number sufficient to justify a notice under these provisions.

In this case, the parties agreed rent was due on the first of each month. The parties agreed that the tenant was late paying rent on January 3, 2013 and February 2, 2013. This is support with rent receipts that have been marked late rent payment of rent.

The evidence of the landlord was the tenant has been late paying rent since August 2012, and does this deliberately. The evidence of the tenant was that building manager refused to take his rent payments. The evidence of the tenant was that he has made arrangement with the landlord and some of those dates were scheduled for the first of the month, at noon hour, however, did not attend due to appointments.

In this case, even if I accept the evidence of the tenant that building manager refused to accept rent payments from him, which I do not, I find tenant has admitted that he has made past arrangements with the landlord to meet on the first of the month at noon and has failed to attend due to appointments. There was no evidence to support that tenant had made alternate arrangements, such as having a friend or family member attend and pay the landlord rent at the appointed time. Instead the landlord was required to make special trips in the attempt to collect rent.

As a result, on the balance of probabilities, I find the tenant has been late paying rent on at least three occasions.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on February 23, 2013.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request. Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
(a) the landlord makes an oral request for an order of possession, and
(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **March 31, 2013, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is dismissed.

The landlord is granted an order of possession.

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: March 21, 2013

Residential Tenancy Branch

