



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause.

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

Preliminary Matters

The tenant did not retrieve the landlord's registered mail sent on March 4, 2013. The tenant confirmed receipt of the mail notice last week; the mail contained the landlord's evidence submission in response to the tenant's application made on February 20, 2013.

The tenant confirmed she had a copy of the documents that were contained in the landlord's submission.

Issue(s) to be Decided

Should a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause, both issued on February 13, 2013, be cancelled?

Background and Evidence

The tenancy commenced on November 22, 2012; rent is \$450.00 due on the 1st day of each month. A security deposit in the sum of \$225.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord and the tenant agreed that after the tenant received a copy of the 10 Day Notice to End Tenancy, given to the tenant via registered mail sent on February 13, 2013, that the landlord received the February rent payment on the effective delivery date of the Notice; February 18, 2013.

A 1 Month Notice to End Tenancy for Cause issued on February 13, 2013 was served to the tenant indicating that the tenant was required to vacate the rental unit on March 31, 2013. The tenant received this Notice on February 18, 2013, sent to her via registered mail. The reasons stated for the Notice to End Tenancy were that the tenant has been repeatedly late paying her rent and that a deposit has not been paid within 30 days as required by the tenancy agreement.

The landlord said that the tenant was not to have a pet; and that as she has a cat she was required to pay the pet deposit. The landlord confirmed that no written notice was given to the tenant informing her of the need to pay a pet deposit. The landlord did not issue a Notice to end the tenancy as a result of the presence of the pet.

The parties agreed that rent is paid by mail. The landlord expects to receive the mail no later than the 1st day of each month.

There was no dispute that rent was paid as follows:

- December 13, 2012;
- January 14, 2013; and
- February 18, 2013.

The tenant confirmed she has not paid March 2013 rent as she will need the money should she have to vacate the unit.

The tenant did not dispute that she has been late with rent payments, but explained that she has experienced a slow-down at work and was forced to apply for social assistance. It was not until the tenant took a copy of the Notice ending tenancy to the social assistance office that she received funds to assist her in paying her rent.

The landlord confirmed that he thought December rent would be paid by the 7th of that month, but the tenant did not pay until the 13th. Then the tenant was late with the next 2 payments and has not paid any rent for March.

The landlord said that he wants possession of the unit by the end of March 2013.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late in making rent payments.

Residential Tenancy Branch (RTB) policy suggests that three late payments are the minimum number sufficient to justify a notice under these provisions.

"It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments... In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent."

There was no dispute that since the tenancy commenced in November 2012 rent has not been paid on time. One occasion where rent was not paid, due to the lack of response by a government agency might support 1 late payment. However, in this case there was no evidence provided by the tenant in support of her submission that somehow the government agency was responsible for the late payments made in each of the 4 months rent has been due. Further, during the hearing the tenant confirmed she has the funds to pay March rent but has chosen not to do so, as she will require the money to assist her in a move from the unit.

Therefore, I find, on the balance of probabilities, taking into consideration RTB policy, that the tenant has been repeatedly late by failing to pay her rent on time in December 2012 and January 2013 to March 2013 inclusive. Therefore, I find that the tenant's application is dismissed

Section 55(1) of the Act provides:

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 the landlord has requested possession of the unit and the tenant's application is dismissed, I find that the landlord is entitled to an Order of possession effective at 1 p.m. on March 31, 2013.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to an Order of possession.

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: March 18, 2013

Residential Tenancy Branch

