



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

During the hearing, the landlord's agents did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on October 9, 2012 for a 1 year fixed term tenancy beginning on November 1, 2012 for a monthly rent of \$834.00 due on the 1st of each month with a security deposit of \$417.00 paid on October 8, 2012.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued on May 1, 2013 with an effective date of May 31, 2013 citing the tenant is repeatedly late paying rent. The landlord confirmed the tenant was served personally with this Notice on May 1, 2013.

The landlord provided testimony and documentary evidence confirming the tenant was late paying the full amount of rent for November and December 2012 and March, April, and May 2013.

The tenant acknowledges that she has been late on these occasions but that this had resulted from some significant incidents, including the loss of employment but that she

has recently secured employment and will be able now to manage her expenses better, including the payment of rent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving the tenants notice to end the tenancy if the tenant is repeatedly late paying rent. A notice issued under this section must end the tenancy effective on a date that is not earlier than a month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that 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.

As per the testimony of both parties I find the tenant has been late on at least 3 occasions with the payment of rent since the tenancy began in November 2012 and as such, I find the landlord has established cause to end the tenancy.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

As the landlord served the tenant with the 1 Month Notice to End Tenancy on May 1, 2013 and rent is due, according to the tenancy agreement, on the 1st of each month I find that the earliest the tenancy may end based on this Notice is June 30, 2013.

Conclusion

Based on the above, I dismiss the tenant's Application and note that the effective date of the end date is amended to June 30, 2013, pursuant to Section 53.

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: May 30, 2013

Residential Tenancy Branch

