



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Aiyansh Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the landlord's agent; the tenant and her advocate.

During the hearing, the landlord's agent did not verbally request an order of possession should the tenant be unsuccessful in the portion of her Application seeking to cancel a notice to end tenancy.

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; to an order requiring the landlord allow the tenant quiet enjoyment and exclusive rights to the rental property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 29, 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on June 1, 2011 as a month to month tenancy for the monthly rent of \$600.00 due on the 1st day of each month with a security deposit of \$300.00 paid.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on April 5, 2013 with an effective vacancy date of May 5, 2013 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has caused extraordinary damage to the unit/site or property/park; tenant has not done required repairs of damage to the unit/site; the tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/ site or property/park.

The landlord submits that the tenant has failed to pay the rent in full when it is due on at least 4 occasions since the start of the tenancy. Specifically the landlord states the rent for April 2013 was paid on April 3, 2013; for March 2013 was paid on March 11, 2013; for November 2012 paid on November 5, 2012; for May 2012 paid on May 28, 2012.

In support of his claim the landlord has submitted three 10 Day Notices to End Tenancy for April 2013; March 2013; and May 2012. The landlord did not provide a copy of a 10 Day Notice for November 2012.

The tenant submits that while she acknowledges that she has paid rent late on some occasions sometimes it is a result of no one being available at the landlord's office on the day that it is due. The tenant also notes that she has been paying her rent in installments each month.

The landlord agrees that on occasion, if the day the rent is due is a weekend or a statutory holiday tenants are allowed to pay rent the first day the office is open after such an occurrence. The landlord acknowledges, as an example, the office was closed on April 1, 2013, however, it was open on April 2, 2013 and the tenant did not pay rent for April until April 3, 2013 after the landlord presented her with the 10 Day Notice.

The tenant also submits that she had made arrangements with the landlord for the March 2013 payment to be made on March 11, 2013. She states that she does not recall whether or not she was late paying November 2012 rent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- d) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time; or
- e) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property.

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice to end tenancy under the ground that the tenant is repeatedly late paying rent.

Based on the testimony and evidence of both parties I find the landlord has established that the tenant has been late paying rent on at least 3 such occasions, possibly 4 in the last year. I note that despite the tenant's claim that she had agreement from the

landlord on at least one of those occasions agreement for accepting a late payment does not constitute an agreement on the part of the landlord that the late payment would not be considered as a late payment.

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.

To end a tenancy under Section 47 the landlord must provide a notice that ends the tenancy on a date that is not earlier than one 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.

As the tenant received this Notice on April 5, 2013 and despite the Notice citing an effective date of May 5, 2013, I find the earliest possible end date, to be compliant with Section 47 would be May 31, 2013 and in accordance with Section 53 I correct the effective date to May 31, 2013.

As I have found the landlord has established cause, under repeated late payment provisions in the *Act*, I find it unnecessary to make any findings or analysis of the remaining issues identified as cause to end the tenancy in the Notice.

Further, as I have found the tenancy will end on May 31, 2013 I find it unnecessary to adjudicate the balance of the tenant's claim seeking an order to have the landlord comply with the *Act*, regulation or tenancy agreement for the matters that would relate solely to an ongoing tenancy such as quiet enjoyment and exclusive possession.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 14, 2013

Residential Tenancy Branch

