



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amos Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel the One Month Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties advised me there was an error on the application with the omission of the landlord's first name. The parties did not raise any objections to the landlord's first name being added and this has now been amended.

Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy Cancelled?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2012. There was a verbal agreement in place for the tenants to rent this unit for \$900.00 per month due on the first day of each month.

The landlord's agent testifies that the tenants have been repeatedly late paying rent in the last year. The landlord's agent testifies that the tenants have been late on more than three occasions with their rent and the owner of the property has decided that she can no longer deal with this situation and requested the landlord's agent to issue the tenants with a one Month Notice to End Tenancy for cause. The landlord's agent testifies that the tenants were served this Notice in person on May 12, 2013. This Notice has been provided in evidence and has an effective date of June 30, 2013.

The landlord's agent testifies that the tenants' rent was most recently late in October and November, 2012 and in January and April, 2013. The landlord's agent testifies that prior to this One Month Notice having been issued the landlord had issued another One Month Notice to End Tenancy on April 19, 2013. However when the tenants paid their rent for April and May on April 30, 2013 the tenants asked the landlord to rescind that Notice if they were going to pay the rent. The landlord's agent testifies that the landlord reluctantly agreed to do this as the landlord wanted the tenants to pay the rent. The landlord has provided a letter in evidence pertaining to this in which the landlord states she complied with the tenants request to rescind the Notice under duress.

The landlord's agent requests that the Notice is upheld in accordance with the *Residential Tenancy Act* and requests an Order of Possession for June 30, 2013.

The tenants testify that when they had some difficulty paying the rent on time in the past they have always spoken to the landlord about their difficulties and the landlord has always verbally agreed that the tenants can pay the rent later. The tenants testify that in January, 2013 they could not get the rent to the landlord until January 04, 2013 and the

landlord could not get to the tenants to collect the rent so agreed the tenants could pay the rent on the 4th. The tenants testify that in April, 2013 they were having some problems getting their government cheques and so asked the landlord if they could pay some of the rent and pay the rest later in the month. The tenants testify that the landlord had served the tenants with the One Month Notice to End Tenancy for late payment of rent however when the tenants paid the balance of April's rent and rent for May on April 30, 2013 the landlord did rescind the Notice after the tenants informed the landlord that their problems were sorted out and rent could now be paid on the first of each month.

The tenants testify that they have continued to pay rent on the first of the month for June; however, just when the tenants thought everything had been agreed, the landlord's agent then serves the tenants with another One Month Notice to End Tenancy. The tenants testify that they have made good on the agreement and therefore the landlord should not have served the tenants with another Notice. The tenants seek to have that Notice set aside.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to Section 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants agree that they have been late with their rent on at least three occasions but state that this was with the agreement of the landlord. The landlord's agent argues that the landlord has had enough and wants the Notice upheld as the tenants have been late so often.

I have considered both arguments in this matter and find that the *Act* is clear on this matter that rent must be paid on the day it is due. If there was an agreement to the contrary then I have no evidence of this and by their very nature verbal agreements are almost impossible for a third party to interpret.

I refer the parties to the Residential Tenancy Policy Guidelines in this matter. The guidelines #38 clarifies the matter of what is considered to be repeatedly late payments as follows:

The *Residential Tenancy Act*¹ provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I find the landlord has sufficient proof to show that the tenants were repeatedly late on more than three occasions since October, 2012. Even if the landlord rescinded the One Month Notice issued on April 19, 2013 the landlord is still entitled to issue a further Notice in order to rely on this provision of the *Act*.

Consequently the tenant's application to set aside the One Month Notice is denied.

A landlord is entitled to orally ask for an Order of Possession at the hearing if the tenant has applied to cancel a Notice to End Tenancy and is unsuccessful. As the landlord's agent has orally requested an Order of Possession and the tenants' application to cancel the Notice is unsuccessful then an Order of Possession has been issued to the landlord pursuant to s. 55 of the *Residential Tenancy Act*.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on June 30, 2013. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 17, 2013

Residential Tenancy Branch