



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause.

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel a Notice to End Tenancy that was given for cause.

Background and Evidence

On May 3, 2013 the landlord served the tenants with the Notice to End Tenancy giving the following reasons:

- Tenant is repeatedly late paying rent.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

The landlord testified that:

- This tenancy began on August 31, 2010 with the monthly rent of \$800.00 due on the first of each month.

- The tenants were having difficulty paying the rent and therefore the landlord agreed to accept rent in two payments, half on the 1st of the month, and the other half on the 15th of the month.
- The tenants have consistently paid the rent late, with rent never been paid on the 1st and 15th of the month.
- The tenants still also owe \$400.00 in outstanding rent, and have not paid the June 2013 rent either.
- She has also been told by the realtor that the tenants have also given false information to prospective purchasers of the rental unit.
- The owner is therefore wanting this tenancy ended and is requesting an Order of Possession.

The tenants testified that:

- They do still owe \$400.00 from January 2013; however the landlord agreed to accept payments on that outstanding rent.
- They have not been paying their rent late every month, because the agreement was that they would pay their rent on the 5th and 20th of each month, not on the 1st and 15th.
- They have complied with the agreement every month and most often pay the rent on the 3rd and 17th, but always before the 5th and 20th.
- June 2013 rent has been paid in full, yesterday June 4, 2013.
- Further they deny ever giving false information to any prospective purchasers of the rental property.

In response to the tenant's testimony the landlord testified that:

- She adamantly denies that there was ever an agreement for the tenants to pay the rent on the 5th and 20th of the month, the owner has always been very clear that she expects the rent on the 1st and 15th of the month.
- The tenants have taken it upon themselves to pay the rent later than the 1st and 15th of the month.
- Further she is unaware of any payment of the June 2013 rent.

Analysis

It is my decision that I will not set aside the one-month Notice to End Tenancy.

The burden of proving a claim lies with the persons making that claim and in this case since it's just the tenants word against that of the landlord, it's my finding that the

tenants have not met the burden of proving their claim that there was an agreement to pay the rent on the 5th and 20th of the month.

Rent is generally due on the first of each month, however in this case the landlord has stated that they agreed to accept rent on the 1st and 15th of the month and therefore since rent has not been paid on the 1st and 15th of the month for many months, it's my finding that rent has been repeatedly late.

Since I have upheld this Notice to End Tenancy for repeatedly rent, there is no need for me to make a finding on the second reason given on the Notice to End Tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply, and at the request of the landlord I've issued an Order of Possession for 1:00 PM on June 30, 2013.

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 05, 2013

Residential Tenancy Branch

