



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ledis Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel 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.

There was no dispute in relation to service of the Notice of hearing and the tenant's evidence completed in August 2013.

The landlord did not make a written submission.

Preliminary Matters

During the hearing I requested; no later than 12 noon on September 23, 2013, that each party submit copies of all rent receipts issued and received from March 2013, onward and a copy of the tenancy agreement. The parties were informed I would consider copies of the requested evidence only and that if only 1 party made a submission I would rely upon that evidence only. If neither makes a submission they understood I would issue my decision based on the oral testimony.

As requested, the tenant supplied copies of rent receipts issued since March 2013; the landlord submitted copies of receipts and the tenancy agreement.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on August 8, 2013 be cancelled?

Background and Evidence

The parties agreed that the tenancy commenced in April 2012. A copy of the signed tenancy agreement indicated that the tenant was the only individual to sign the agreement. The landlord and tenant said that the tenant had a co-tenant, but he did not sign the agreement that was before me as evidence.

Rent was \$700.00 per month and was increased effective September 1, 2013. Rent is due on the 1st day of each month; this was not in dispute. A security deposit in the sum of \$350.00 as paid on May 1, 2012.

The parties agreed that by June 2012 the co-tenant vacated the unit and the tenant continued the tenancy, with rent and the rent due date remaining as it was on the signed tenancy agreement.

The tenant disputed the 1 month Notice ending tenancy issued and given to her on August 8, 2013. The tenant agreed that on August 8, 2013 she also received a 10 day Notice to end tenancy for unpaid rent and that she paid the August rent on August 9, 2013.

The reasons stated for the Notice to End Tenancy were that:

- the tenant has been repeatedly late paying her rent; and
- that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property and/or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

Rent receipts supplied by both parties showed that 2013 rent was paid, as follows:

March 1 2013	\$450.00
March 15	120.00
March 22	120.00
April 5	710.00
May 3	600.00
May 6	50.00
May 8	80.00 (including 12.50 for window repair
May 26	350.00
June 5	650.00
June 17	50.00

July 3	500.00 (200.00 owed by July 13)
August 6	600.00
August 9	100.00 (balance)
August 30	727.00 September rent

There was no evidence supplied by either party indicating if the balance of July rent was paid or not.

The parties agreed that September 2013 rent was paid on time.

The landlord said that in February 2013 he did give the tenant permission to make several rent payments in March. The landlord stated that no other permission was given and that after March 2013 he expected rent to be paid on time. The tenant said that the landlord had also loaned her \$100.00; which the tenant agreed she has yet to repay. There was no dispute that the tenant had previously been given several 10 day notices to end tenancy, as the result of late payment of rent in 2012 and that a Notice for unpaid rent was also issued in August 2013.

The tenant said that she had been experiencing problems with her health and she was having financial problems. The landlord had allowed the tenant to make a \$500.00 payment at the beginning of each month, commencing in March, 2013, with the balance to be paid by the middle of each month. The tenant said this is what she did and that her rent payments should not be considered as late.

The landlord made submissions in relation to the allegation the tenant is engaging in illegal activity. There is suspicion that the tenant is selling drugs from her unit. The police have yet to establish a case confirming the sale of drugs, but other occupants of the building and a neighbour have complained of constant traffic and visitors who come to the unit for very short periods of time and then leave. Some packets of drugs were found in the hallway and it is suspected those drugs belonged to the tenant.

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 paying rent.

Residential Tenancy Branch policy suggests that three late payments are the minimum number sufficient to justify a notice ending tenancy for cause. 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. 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 this to be a reasonable stance.

I find that the landlord did give the tenant permission to make late payments in March 2013; this was confirmed by the landlord during the hearing.

Since April 2013 the rent has been paid on time only after the landlord issued the August 8, ten day Notice to end tenancy for unpaid rent; the tenant then paid August rent owed on the next day and paid September 2013 rent on time. However, the rent owed in April, May, June and July had been paid late, contrary to the tenancy agreement signed by the parties.

If I accepted the tenant's submission that from March 2013 onward she had permission to pay \$500.00 rent on the 1st day of each month and the balance in the middle of the month; from the evidence before me I find that this argument fails, as at least in May 2013, she failed to meet that agreement.

Given the past notice of late rent payments made in 2012, when the landlord issued several 10 day notices to end tenancy, I find, on the balance of probabilities that the tenant understood that, outside of March 2013, rent was due on the first day of each month.

In the absence of evidence that the rent payment term had been changed, I find that the landlord did not waive the right to issue a Notice ending tenancy based on late payment of rent. In the absence of any written agreement between the parties, altering the term of the signed tenancy agreement, I find, on the balance of probabilities that the rent payment term had not been waived by the landlord. In particular, the tenant had been warned in the past that a failure to pay rent on time would result in the landlord issuing a 10 day Notice to end tenancy. As soon as the landlord issued the August 8, 2013 Notice for unpaid rent, the tenant immediately paid the rent, which tells me that the tenant had chosen not to meet the terms of the signed tenancy agreement.

I have considered the credibility of the parties and find, in the circumstances before me, the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favoured the submissions of the landlord. If anything, I find that the landlord had attempted to assist the tenant in the month of March, but beyond that month, there was nothing before to support the tenant's submission that she had been given permission to cease making rent payments on the 1st day of each month.

Therefore, I find that the tenant's application is dismissed and that the 1 month Notice ending the tenancy for cause issued on August 8, 2013 is of full force and effect and that the effective date of the Notice is September 30, 2013.

There was not sufficient evidence before supporting the allegation the tenant had engaged in illegal activities; only that there was a suspicion of illegal activity by the tenant or a guest.

Conclusion

The tenant's application is dismissed.

The 1 month Notice ending the tenancy for cause issued on August 8, 2013 is of full force and effect.

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: September 23, 2013

Residential Tenancy Branch

