



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OPC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated October 28, 2013, purporting to be effective November 30, 2013 and an order to force the landlord to comply with the Act and agreement.

The hearing was also convened to hear an application by the landlord seeking to terminate the tenancy in accordance with the One Month Notice to End Tenancy for Cause issued October 28, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Is the tenant entitled to an order cancelling the One Month Notice for Cause ?

Background and Evidence: One-Month Notice for Cause

The One Month Notice to End Tenancy for Cause indicated that the landlord was seeking to terminate the tenancy because the tenant was repeatedly late paying rent and because the tenant had seriously jeopardized the health, safety or lawful right of the landlord or another occupant.

The agent of the landlord stated that they were only prepared to pursue the late payment issue as the cause to end the tenancy.

The tenancy began in 2011 and the current rent is set at \$900.00, due on the first day of each month. Evidence was submitted by the applicant consisting of a copy of a One-Month Notice to End Tenancy for Cause dated October 28, 2013. A copy of the tenancy agreement was submitted confirming that rent is due on the first day of each month.

The landlord testified that the tenant was chronically late in paying rent during the tenancy and, although late payments were apparently tolerated and no written warnings were issued cautioning the tenant that rent is due on the first day of the month, the landlord now seeks to end the tenancy based on the persistently late payments.

The tenant testified that there was an informal verbal agreement with the landlord allowing him to pay the rent in increments when his employment wages were deposited in his account. The tenant testified that, whenever he did pay the rent by email transfer on the first day of the month, the landlord has delayed in accepting the transfer of the rent. The tenant stated that the records confirm this fact.

Bank records and transaction histories were submitted by the parties. The data appeared to confirm that there was a clear history of the tenant making partial rent payments to the landlord for a period of time during this tenancy, and late payments of rent after the first day of the month. No written records were submitted to confirm that the landlord had ever cautioned the tenant about this practice. However, the landlord testified that there never was any consent for the altered payment practice and the landlord also pointed out that the tenant was repeatedly warned about paying late.

The tenant denied this and stated that the landlord willingly accepted the altered payment schedule.

The landlord's position was that the tenant was fully aware that rent was due on the first day of the month yet persisted in repeatedly paying late, which would be a valid reason to issue and enforce a Notice to end Tenancy for Cause. The landlord seeks an Order of Possession.

The tenant testified that, as soon as he became aware that the landlord genuinely had an issue with the late payment of rent, he has made it a practice of paying on time and will continue to pay rent on or before the first day of each month in future.

Analysis:

In regard to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that this did transpire and that this practice is not consistent with the terms of the tenancy agreement.

I find that the testimony of the landlord that the tenant was cautioned against the late payments was disputed by the tenant and was not supported with evidence.

I accept the tenant's testimony that late payments may have been implicitly accepted by the landlord in the past. However, this practice is clearly in violation of both the Act and the tenancy agreement and it will no longer be tolerated.

Section 26 of the Act specifically requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Under section 47, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause.

I find that this One-Month Notice to End Tenancy for Cause should be cancelled. That being said, the tenant should now be aware that paying the rent late is a serious violation of both the Act and that the tenancy agreement and if the tenant repeats this on one more occasion, it could result in termination of the tenancy under section 47.

I also order that the tenant comply with the landlord's directions in restricting communications to the landlord's agent only.

Based on the evidence and testimony, I hereby cancel the One-Month Notice to End Tenancy dated October 28, 2013. In doing so, I caution the tenant that repeated late payment of rent is clear justification under section 47 to terminate the tenancy.

I find that neither party is entitled to be reimbursed the cost of their application.

Conclusion

The tenant is successful in the application with a caution that any future occurrence of late payment of his rent will jeopardize the continuation of his tenancy.

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: December 19, 2013

Residential Tenancy Branch

