



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC LRE O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 24, 2013, by the Tenants to cancel a Notice to end tenancy issued for Cause; to Order the Landlord to comply with the Act, regulation or tenancy agreement; to suspend or set conditions on the Landlord's right to enter the rental unit; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord argued that he has not yet received copies of the Tenants' evidence because they did not deliver their evidence to the building manager until November 24, 2013. He indicated that the building manager left the evidence in his office in the rental unit building but he has been out of town. The Tenants confirmed their evidence was not delivered until November 24, 2013, but argued the Landlord told them to give it to the building manager.

Section 3.5(a) of the *Residential Tenancy Branch Rules of Procedure* provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Based on the foregoing I find the Tenants did not provide copies of their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore, I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules*

of *Procedure*, the Tenants' documentary evidence will not be considered in my decision. I did however consider the Tenants' testimony.

Upon review of the Landlord's evidence, the Tenants indicated they received one package of evidence from the Landlord and provided oral testimony of each document they received. The *Residential Tenancy Branch* received two packages of evidence from the Landlord consisting of 23 and 31 pages respectively. The Tenants did not receive the same evidence from the Landlord, as required by section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, I find that any evidence submitted by the Landlord which has not been received from the Tenants cannot be considered in my decision. I did however consider the Landlords' testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Notice to end tenancy be cancelled or upheld?
2. If upheld, did the Landlord appear at the hearing and request an Order of Possession?
3. If cancelled, should the Landlord's right to enter the rental unit be suspended or have conditions set?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on September 1, 2011 and switched to a month to month tenancy after one year. Rent began at \$1,500.00 per month and was increased to \$1,557.00 effective August 1, 2013. On September 15, 2011 the Tenants paid \$800.00 as the security deposit and \$700.00 as the pet deposit. A move in condition inspection report form was completed and signed on August 17, 2011.

The Landlord testified that the final issues arose when he was given permission to go into the rental unit and repair the caulking and drywall around the show. He entered the suite on approximately September 23, 2013, and noticed that there was a second cat inside the unit; the Tenants had installed a deadbolt lock on one of the bedroom doors; and they had left debris and garbage on the patio. He said he sent them an e-mail

September 23, 2013, at 4:22pm informing them that they needed remove the cat, bedroom deadbolt and garbage from deck. He also requested a copy of the key for the deadbolt lock to ensure the building managers could access the room in the case of an emergency.

The Landlord stated that he later wrote a warning letter dated September 27, 2013 to the Tenants. He posted another letter dated October 18, 2013, and the 1 Month Notice to end tenancy on the Tenants' door on October 19, 2013 because they did not resolve the issues within the time frames and have breached their tenancy. He stated that he came to the hearing today to get an order to proceed with the eviction and given him possession of the unit.

The Landlord submitted that the other reason for issuing the 1 Month Notice was that he is constantly getting after the Tenants for paying their rent late and that he told them he would not be tolerating this anymore. Their arrangement has always been that the Tenant would deposit their rent payment directly into the Landlord's bank account by the due date because the Tenant's work was right beside the bank. He argued that although the December 2013 rent was paid in full and on time there have been several late payments this year which include the following payment dates: September 3, 2013; July 2, 2013; June 3, 2013; February 4, 2013; and December 3, 2012.

The Tenants confirmed their rent is normally paid by either an on-line bank transfer or they make a deposit into the Landlord's account in person. They acknowledged that there have been times when their rent is not deposited into the Landlord's account on the first of the month but in most cases the first was either a statutory holiday or there were other reasons which they had previously explained to the Landlord, such as being with her brother while he was in the hospital.

The Tenants confirmed receipt of the letters and emails discussed by the Landlord. They argued they were only babysitting the second cat and he is no longer in the rental unit. They stated that the one Tenant requires a lock on her bedroom door for medical reasons and argued that the Landlord gave them verbal permission to install it. They were not aware that they were required to provide the Landlord with a key for this lock. As for the patio, they have removed the one bag of soiled cat litter but the other items are their patio possessions and include a cooler, their bbq, Tiki torches, and patio table set.

A discussion took place where the parties attempted to reach a settlement agreement to continue this tenancy. However, the conversation became confrontational and each party decided that they would not proceed with the settlement agreement.

In closing, I advised both parties that they would be required to continue to uphold their rights and responsibilities as stipulated in the *Residential Tenancy Act*. We discussed a tenant's right to quiet enjoyment, a landlord's right to access, and when documents are deemed to have been served. I have pasted sections 28, 29, and 90 of the *Residential Tenancy Act* to the end of this decision for further review.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act. The Notice was served on October 19, 2013, and the effective date is November 30, 2013, pursuant to section 90 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant is repeatedly late paying rent
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline # 38 provides that 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.

The evidence supports that the tenancy agreement stipulates that rent is payable on the first of each month. Although rent was paid in full and on time on December 1, 2013, the evidence supports the Tenants paid their rent late on September 3, 2013; July 2, 2013; June 3, 2013; February 4, 2013; and December 3, 2012.

Based on the above, I find there to be sufficient evidence to uphold the 1 Month Notice and end this tenancy on the grounds that the Tenants have repeatedly paid their rent late. Therefore, there is no need to analyze the remaining reasons for issuing the 1

Month Notice. Accordingly, I dismiss the Tenants' application to cancel the 1 Month Notice to end tenancy, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord's evidence included a note which indicates that if there is no compliance to the 1 Month Notice then the receipt is for use and occupancy. The evidence provides that money has been paid by the Tenants for the full month of December 2013, which I find to be for use and occupancy of the unit. Accordingly I award the Landlord an Order of Possession effective December 31, 2013.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY ISSUE the Landlord an Order of Possession effective **December 31, 2013**. This Order is legally binding and must be served upon the Tenants.

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 06, 2013

Residential Tenancy Branch

