



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Preliminary Issues

At the outset of this proceeding the Landlord introduced himself and provided the spelling of his first and last names. Upon review of the Tenant's application for dispute resolution I noted that the Landlord's first name had been spelled incorrectly showing the "a" and "e" in reverse order.

I informed both parties of the error made when the Tenant completed his application and confirmed that it was simply a spelling error. Accordingly, the style of cause was amended to include the correct spelling of the Landlord's first name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 21, 2013, by the Tenant to cancel a Notice to end tenancy issued for Cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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.

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 1 Month Notice to end tenancy issued for Cause on October 8, 2013, be upheld or cancelled?

2. If upheld, did the Landlord appear at the hearing and request an Order of Possession?

Background and Evidence

The undisputed testimony provided that the parties entered into a tenancy agreement that was to begin on November 1, 2011. Rent is payable on the first of each month in the amount of \$1,500.00 and the Tenant paid \$800.00 as the security deposit on or before November 1, 2011.

The Landlord's Agent testified that the Tenant has repeatedly paid their rent late, as supported by the numerous 10 Day Notices issued in 2012 and 2013 and copies of receipts, as provided in their documentary evidence. He stated that he and the Landlord attended the hearing today to them to get an Order of Possession and to uphold the eviction.

Neither party provided a copy of the 1 Month Notice in their evidence; however, both provided oral testimony confirming the form and content of the Notice as well as receipt of the Notice by the Tenant. The Notice was issued October 8, 2013, for the reason of repeated late payment of rent.

The Tenant testified that he has not paid rent for November 2013 and has not paid rent for December 2013. He confirmed that in his written statement that there have been times when they paid the rent late and argued that rent was late because his wife did not want to go into the bar with their child to deliver the rent payment. He alleged that some of the rent receipts have been altered to show incorrect dates.

The Tenant confirmed that he has not been granted an Order from the *Residential Tenancy Branch* giving him authority to stop rent payments and he has not paid for emergency repairs in the past couple of months.

Analysis

I have carefully considered the aforementioned and upon further review of the documentary evidence, I find the evidence supports that there have been several months where the Tenant has failed to pay rent on the first of the month, as required in accordance with the tenancy agreement. Those months include December 2013, November 2013, October 2013, January 2013, October 2012, August 2012, and February 2012, as supported by the 10 Day Notices issued to the Tenant. There are also the rent receipts which show payments received after the first of each month.

The *Residential Tenancy 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.

Based on the undisputed testimony, I find the 1 Month Notice to End Tenancy to be completed in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore the Notice is upheld and the Tenant's application to set aside the Notice is dismissed, 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 or his Agent makes an oral request for an Order of Possession during the scheduled hearing. Accordingly, I award the Landlord an Order of Possession.

Conclusion

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

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

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 03, 2013

Residential Tenancy Branch

