



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC, FF

Introduction

This hearing was set to address a claim by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlords for an order of possession. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on March 11, 2014, the tenants received from the landlord a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenants have been repeatedly late paying rent. The parties agreed that under the tenancy agreement, rent is due on the first day of the month.

There was some dispute over rental payments made in the months of May and July, but for the reasons explained below, I will not set out the facts surrounding those rent payments.

The landlords alleged that the following rental payments were late:

- August payment received August 6
- September payment received September 13
- October payment received October 15
- December payment received December 4
- March payment received March 4

The parties agreed that during the summer of 2013, the landlords gave the tenants a letter advising that the only means by which the tenants should pay rent was by direct

deposit or post dated cheque. The landlords gave the letter to the tenants and insisted that because the tenants signed the letter, they agreed to the conditions therein. The tenants testified that they signed the letter to acknowledge receipt of the letter, not to bind themselves to specific means of payment.

The tenants acknowledged that their rent payments in August and October were not made on the first day of those months. The tenants testified that in September, they paid the landlord via Interac email transfer, but the landlord did not know how to accept that transfer and asked them to pay by another means.

The tenants testified that in an effort to comply with the landlords' requirement that they pay via direct deposit or post-dated cheque, they obtained bank drafts each month which they would then directly deposit into the landlords' account at the landlords' bank.

The tenants testified that on December 1, which fell on a Sunday, both the male tenant's brother and his sister attempted to pay the rent by online means but were unable to do so. The tenants were finally able to pay rent on December 4.

The tenants could not recall the date on which they direct deposited their rent for May.

The landlords seek an order of possession and recovery of their filing fee. In addition to an order setting aside the Notice, the tenants seek to recover their filing fee as well as registered mail costs. At the hearing, I advised the tenants that the only litigation-related cost I am empowered to award is the cost of their filing fee and I dismissed the claim for registered mail costs.

Analysis

Residential Tenancy Policy Guideline #38 provides that the landlords must prove that the tenants have paid rent late at least 3 times in order to support a notice to end tenancy on that ground. Although there was significant disagreement between the parties about rental payments made in the months of May and July, it is not necessary for me to consider whether those payments were late as the tenants have made 3 other late payments since that time.

The tenants acknowledged having paid rent late in the months of August and October, which means the landlords have to prove just one other late payment in order to support the grounds for the Notice.

I find that the tenants attempted to pay rent on time in the month of September, but the landlords were unable or unwilling to accept that attempted payment. The fault for that

should be visited on the landlords rather than the tenants and I find that the September payment cannot be considered late for the purpose of supporting the Notice.

The tenants should have known that December 1 fell on a Sunday which may interfere with their plans to pay online. The tenants had an obligation to ensure that their payment was in the landlords' hands or their bank account by midnight on the day it was due and I find that they failed in that obligation. Although the landlords did not have the right to unilaterally decide the means by which the tenants were to pay rent, and I find that the tenants' signature on the landlords' letter restricting means of payment acknowledged receipt of the letter rather than agreement, the tenants chose to directly deposit monies rather than pay by another means which might have ensured that their rent was paid on time.

As the tenants were unable to confirm that they deposited their rent on Saturday, March 1, I find it more likely than not that March's rent was also paid late.

I have found that the rent was paid late in the months of August, October, December and March. I find that the landlords have proven that the tenants have repeatedly paid rent late and that they have grounds to end the tenancy. I dismiss the tenants' application in its entirety.

I grant the landlords an order of possession effective May 31, 2014. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court should the tenants fail to comply with the order.

Because the landlords could have orally requested an order of possession at the hearing pursuant to section 55(1) of the Act, I find that they should bear their own filing fee.

Conclusion

The tenants' claim is dismissed and the landlords are granted an order of possession effective May 31, 2014.

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: April 23, 2014

Residential Tenancy Branch

