



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied seeking cancellation of a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the tenant's application.

Thereafter both parties were provided the opportunity to present their evidence orally, to refer to any relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-As the landlord confirmed not sending his documentary evidence to the tenant, as required by section 4.1 of the Dispute Resolution Rules of Procedure, I have excluded his evidence from consideration.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

This tenancy began on or about April 15, 2009, monthly rent is \$1300, and the tenant paid a security deposit of \$650 at the beginning of the tenancy.

This landlord was not the original landlord to the tenant; instead he purchased the residential property and took possession from the original landlord/owner on October 25, 2013, according to the landlord.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated February 7, 2014, was delivered via personal delivery on February 9, 2014, listing an effective end of tenancy on March 31, 2014.

The cause as stated on the Notice alleged that the tenant is repeatedly late in paying rent.

In support of his Notice, the landlord testified that he visited with the tenant on October 22, 2013, and requested that the tenant pay rent with a cheque; thereafter the tenant called a few days later and informed him she could not pay rent with a cheque. The tenant, according to the landlord, asked to pay rent with a bank draft, and then again, with an email transfer of funds and that he agreed.

The landlord stated that he did not receive any rent until December 4, 2013, when he received the November and December rent in a bank draft.

The landlord stated that he did not receive the rent for January until January 4, 2014.

In response, the tenant submitted that she and the landlord did not discuss how rent was to be paid in their October meeting and that the landlord failed to inform the tenant how rent should be paid until November 24, 2013.

The tenant submitted that the landlord was verbally abusive to her and made it difficult to pay rent as he at first would not give her a bank account number in which to deposit her rent, as she had been so doing for the first 4 ½ years of the tenancy. The tenant then submitted that the landlord also would not initially give to her an email address to which to send the rent funds via email transfer.

The tenant submitted that she mailed the November and December rent on November 29, 2013, and that the parties agreed that rent for January could be paid on January 4, via email transfer, due to both parties being on holiday.

The tenant submitted that the landlord refused to accept the emailed January rent payment until January 17, 2014, and that when she inquired of him as to the late acceptance, he became verbally abusive.

The tenant submitted that she had paid the February and March rent payment on the last day of the month prior to each, via email transfer, and that this is the first time in 30 years of being a tenant that she has experienced such difficulty with a landlord in paying rent.

The landlord denied the tenant's submissions and said he just wanted her out of the rental unit.

Analysis

Section 47(1)(b) of the *Act* authorizes landlords seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions. The landlord relies on this guideline to justify their Notice.

However, in the case before me, after considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed. In reaching this conclusion I find that the tenant had a method of rent payments with the previous owner of the rental unit for 4 and ½ years of depositing the rent payments into a bank account and that when this landlord assumed ownership, he failed to provide written communication to the tenant as to the method of payment he expected of the tenant. I find that the evidence suggests that the landlord made difficult for the tenant to continue her rent payments as accustomed and if there was to be a change in the method of payment, the onus was on the landlord to ensure the tenant knew of such change and that she would be able to abide by the change.

I was also persuaded by the landlord's lack of any notice, written or oral, to the tenant that her payments were repeatedly late and that he failed to issue written warnings to the tenant about the alleged infraction, with notice that a continuation of such late payments could lead to the end of the tenancy.

At present it appears that the parties have now reached an acceptable method of rent payments, that being by email transfer; however, the landlord is reminded that should he at any point require the tenant to mail a payment by cheque, he should consider mailing time and postage costs.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the cause listed on the Notice, irrespective of Policy Guideline 38.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated February 7, 2014, issued February 9, 2014, for an effective move out date of March 31, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful with her application, I grant her recovery of her filing fee of \$50. The tenant is authorized to deduct \$50 from her next, or a future month's rent payment, with notice to the landlord that she is making such deduction for this purpose.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: April 4, 2014

Residential Tenancy Branch

