



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated February 3, 2014 to be effective March 3, 2014 and the tenant confirmed it was served personally on them. The effective date on the Notice is automatically corrected to March 31, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The parties gave evidence that rent was payable on the first of each month. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed he received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2013, it is a month to month tenancy as the written tenancy agreement was never signed, rent is \$1400 a month and no security deposit was paid. The landlord gave evidence that he served several Notices to End Tenancy for unpaid rent and issued the one dated February 3, 2014 for persistent late payment of rent.

The tenant agreed that they had been late in paying their rent many times, firstly because his pay period was on the 5th of the month and then he unfortunately lost his job in December. The landlord requested an Order of Possession if the tenant is unsuccessful in this application. He said he intended to pursue a monetary order later.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible as it is supported by the evidence of the tenant who honestly agreed that he had unfortunate circumstances and was late many times in paying his rent. I find the landlord had sufficient cause pursuant to section 47 of the Act to end this tenancy for persistent late payment of rent.

For this reason, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on March 31, 2014 as automatically corrected under section 53 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy dated February 3, 2014 is dismissed. The tenancy is at an end on March 31, 2014 (as corrected). Pursuant to section 55 and on his request, an Order of Possession is issued to the landlord effective March 31, 2014. No filing fee is awarded to the tenant as he was unsuccessful in this application.

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: March 12, 2014

Residential Tenancy Branch