



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing, to determine the tenant's application for an order setting aside a 1 Month Notice to End Tenancy, was originally scheduled for April 15, 2012. At that time the tenant appeared and explained that he is autistic, would like to have his advocate with him at the hearing, and that his advocate was not able to attend at this date and time. He asked for a short adjournment.

The landlord objected to the adjournment arguing that the tenant had made his application some time ago, had had sufficient time to arrange for the attendance of his advocate, and they had inconvenienced themselves to be ready for this hearing.

After considering both arguments and having consideration to the criteria for adjournments set out in Rule 6.4 I decided to allow a short adjournment on the grounds that:

- that the purpose of the adjournment – allowing the tenant's advocate to be present – would contribute to the resolution of the matter in the manner set out in Rule 1 and would allow a fair opportunity for the tenant to be heard; and,
- that the landlord's position would not be substantially prejudiced by a short adjournment.

The hearing was rescheduled to a date and time convenient to all the parties.

At the adjourned date all the parties, and the tenant's advocate, appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

Background and Evidence

This month-to-month tenancy commenced November 1, 2012. There is a written tenancy agreement. At the beginning of the tenancy the monthly rent, which is due on the first day of the month, was \$1000.00. As of the date of the hearing the monthly rent is \$1038.00. The tenant has paid a security deposit of \$500.00.

The parties both testified that the tenant has been late paying his rent from time to time in the past. The tenant testified that he always spoke to the landlord when the rent was going to be late and that the landlord was always reasonable with him. The landlord testified that the late payment has been more consistent lately.

The parties both testified that the October 2013, November 2013, January 2014, February 2014 rents were paid late. The landlord served the tenant with a 10 Day Notice to End Tenancy for Late Payment of Rent in January and February. The tenant acknowledged receipt of both notices. On both occasions the tenant paid the overdue rent within five days of receiving the notice. The tenant testified that the only time the rent was not paid within the first week of the tenancy was in December when, because of a variety of circumstances, he was not able to pay the balance of the December rent - \$128.00 – until the middle of the month.

On February 28, 2014, the landlord issued and served a 1 Month Notice to End Tenancy for Cause, which the tenant acknowledged receiving on that day. The reasons stated on the notice were:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The effective date of the notice was March 31, 2014.

In support of the second reason, the landlord filed complaint letters from the tenants immediately above and below the tenant. The landlord testified that although there had been noise issues in the past – which they had tried to work through with the tenant – “the straw that broke the camel’s back” was an incident on February 20. The parties gave conflicting evidence about that incident. The tenant testified that he tried to be cooperative with the landlord whenever they spoke to him about a particular behaviour and he always tried not to repeat any behaviour that was a concern.

The tenant paid the rent on time in March and April. The April rent was accepted by the landlord with a receipt that stated it was for use and occupancy only.

Analysis

Section 47(1)(b) of the *Residential Tenancy Act* allows a landlord to end a tenancy if the tenant is repeatedly late paying rent. The law that is to be applied by arbitrators is set out in Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent. It states that three late payments are the minimum number sufficient to justify a notice under these provisions. It also explains that the reason for the lateness may be considered by an arbitrator only if they represent exceptional circumstances.

The tenant paid the rent late in four of the five months preceding the issuance of the 1 Month Notice to End Tenancy for Cause. Uncooperative roommates, bank holds on cheques, and trouble collecting monies due are not exceptional reasons.

I find that the landlord has established cause for ending this tenancy and the 1 Month Notice to End Tenancy for Cause dated February 28, 2014 is valid. The tenant's application is dismissed.

Section 55(1) of the *Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. As the tenant has paid the rent to the end of April the effective date of the order of possession will be 1:00 pm, April 30, 2014.

Conclusion

The tenant's application is dismissed. The landlord has been granted an order of possession effective 1:00 pm, April 30, 2014. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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 24, 2014

Residential Tenancy Branch

