



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for cause, to allow more time to cancel the notice and to recover the filing fee.

The Tenant appeared for the hearing along with the Landlord and an agent for the Landlord. The Landlord and Tenant both provided affirmed testimony during the hearing as well as written evidence prior to the hearing. No issues in relation to the service of the written evidence and Notice of Hearing documents were raised by the parties.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the start of the hearing, I determined that the Tenants had made the Application to dispute the notice to end tenancy for cause within the time limits stipulated by section 41(5) of the Manufactured Home Park Tenancy Act (the “Act”). As a result, I dismissed the Tenants’ Application for more time to cancel the notice to end tenancy.

Issue(s) to be Decided

- Has the Landlord proved that the Tenant was repeatedly late paying rent?
- Has the Landlord re-instated the tenancy?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on May 2, 2001 on a month to month basis. Rent was established at the start of the tenancy in the amount of \$150.00 and then through a number of rent increases, was increased in 2013 to an amount of \$200.00. Currently rent is payable to the Landlord in the amount of \$204.00 per month on the first day of each month.

The Landlord testified that the Tenant had been paying rent late through the last year of the tenancy and testified to the following late rent payments that the Tenants had made in 2013: June 4; August 2 and September 3. The Landlord testified that in 2014 the Tenants paid rent late on January 2, and March 4, 2014. For the latest late rent payment, the Tenant was served with a notice to end tenancy for unpaid rent or utilities and subsequently the Tenants paid full rent on March 6, 2014.

After this payment was made, the Landlord served the Tenants personally with a 1 Month Notice to End Tenancy for Cause (the "Notice") on March 6, 2014 because the Tenants were repeatedly paying rent late. The Notice shows an end of tenancy date of April 6, 2014 and the Landlord sought an Order of Possession for this Notice.

The Landlord confirmed that the Tenants had paid rent on time for: October, November and December, 2013; and for April and May, 2014.

The Tenant did not dispute the late rent amounts testified to by the Landlord but testified that for some of the months where the rent payable fell on holiday dates, he was unable to get to the bank as it was closed. The Tenant submitted that they were long term Tenants and were under the understanding that the Act allowed five or seven days grace in paying rent.

Analysis

I find that the Notice served to the tenants complied with section 45 of the Act and was served to the Tenants in accordance with the Act on March 6, 2014.

Policy Guideline 38 to the Act states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a Landlord may end a tenancy where the Tenant is repeatedly

late paying rent. 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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

A Landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

While I indicated to the parties during the hearing that I would consider a period of six months for the repeatedly late payments of rent, I have decided under the circumstances to consider a period of twelve months in assessing whether the Tenant has repeatedly paid rent late.

I have also considered whether the Landlord re-instated the tenancy by accepting rent after the Notice was served to the Tenants.

As a result, I have determined that while the Tenants had been repeatedly late paying rent for the months of June, August and September, 2013, even though these were not successive, I find that the Landlord failed to act in a timely manner in issuing the Tenant with a Notice at this point (September, 2013). After this period, three months lapsed before the Tenant paid late rent again which I deem under these circumstances is far apart until the next breach occurred.

I also find that by accepting rent from the Tenants for the period after which the Notice was given to the Tenants, and in the absence of sufficient evidence to show that the rent was accepted for use and occupancy only and that the tenancy was not going to be re-instated, I find that the Landlord re-instated the tenancy by accepting rent after the effective date of the Notice. Therefore, based on the foregoing, I find that it is more appropriate to cancel the Notice.

However, the Tenants are put on notice that any further late payments may lead to an ending of the tenancy through the issuing of another Notice by the Landlord for repeatedly late payment of rent.

The Tenants are also cautioned as to their obligations with regards to payment of rent pursuant to section 20(1) of the Act, which requires rent to be paid on time; the Act does

not allow the Tenants any grace time for paying rent the day after it is due under the agreement and as a result, the Landlord is at liberty to end the tenancy via a 10 day notice to end tenancy for unpaid rent and/or issuing the Tenants with a notice to end tenancy for repeatedly late payment of rent if applicable.

Conclusion

For the reasons set out above, I cancel the Notice issued by the Landlord to the Tenants on March 6, 2014.

As the Tenants have been successful in cancelling the Notice, pursuant to section 65(2) of the Act, the Tenants may recover the \$50.00 filing fee by deducting it from a future installment of rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 05, 2014

Residential Tenancy Branch

