



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed her a 1 Month Notice on April 17, 2014. The landlord confirmed that the tenant handed him a copy of her dispute resolution hearing package on April 22, 2014. The tenant confirmed that the landlord handed her a copy of his dispute resolution hearing package on May 7, 2014. Both parties also confirmed that they have received copies of one another's written evidence packages. I am satisfied that the parties have served one another the above documents in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to recover his filing fee from the tenant?

Background and Evidence

This periodic tenancy began on October 1, 2012. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the tenant monthly rent is set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit, paid when this tenancy commenced.

The tenant entered into written evidence a copy of the landlord's 1 Month Notice requiring the tenant to end this tenancy by May 31, 2014. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord gave sworn testimony that the rent is always late and that the only times when the tenant has paid her rent on time were the last two months, and since he issued the 1 Month Notice. The tenant admitted that she paid her rent late in March and April 2014, but maintained that these were the only occasions when she has been late in paying her monthly rent. She estimated that she paid the remainder of her March 2014 rent by March 20-23, and all of her April 2014 rent by approximately April 11, 2014.

Although the landlord reiterated that the tenant was always late in paying her rent, he had no specific details regarding her alleged late payments of rent other than the tenant's own admission that she was late paying her March and April 2014 rent. He said that he sometimes gave the tenant receipts for her cash payments if she asked for them. If she did not specifically ask him for receipts, he said he did not issue receipts.

The landlord also confirmed that he received the tenant's full \$1,200.00 rent payments for May and June 2014, after he issued his 1 Month Notice. His receipt of the tenant's June 2014 rent payment occurred after his 1 Month Notice was to take effect. The tenant testified that she understood that her tenancy was being continued when the landlord accepted her last two rent payments.

The parties provided conflicting evidence as to whether damage has occurred during this tenancy and whether the landlord has authorized the tenant to rent part of her rental unit to other individuals. The tenant said that the landlord has allowed her to rent to students and she has done so with his permission and authorization.

Analysis

Section 47(1) of the *Act* establishes that a landlord can end a tenancy for cause if any one of the reasons outlined above in the landlord's 1 Month Notice can be established.

With respect to the landlord's claim that the tenant has been repeatedly late paying rent, Brach (RTB) Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...

Based on the evidence before me, I find on a balance of probabilities that there is undisputed sworn testimony from both parties that the tenant was late in paying her rent for March and April 2014. The parties gave conflicting sworn testimony regarding any further late payments of rent. In such circumstances, the burden of proof rests with the landlord, the party seeking to end the tenancy on the basis of alleged repeated late payments of rent. The landlord provided no records to demonstrate late payments of rent, does not appear to have complied with the requirement in the *Act* to issue rent receipts for the tenant's cash payments, and did not provide either sworn testimony or written evidence regarding the details of any late payments made by the tenant for months other than for March and April 2014. Although the landlord stated repeatedly that the tenant was always late paying her rent and seldom paid all of it by the first of each month, he had no details of any kind to support his sworn testimony in this regard.

Based on a balance of probabilities, I find that the landlord has only established that the tenant has been late paying her full rent on two occasions (i.e., March and April 2014), whereas Policy Guideline #38 requires him to demonstrate that there have been a

minimum of three late payments of rent. For these reasons, I dismiss the landlord's May 2014 application to end this tenancy for late payment rent without leave to reapply.

At the hearing, the landlord was unable to describe any "illegal" activities occurring at the rental unit with the exception of his claim that the rental unit smelled funny and that some form of illegal drug is likely being used on the premises. I advised the landlord that this evidence fell far short of demonstrating that there was illegal activity being undertaken at the rental unit. I dismiss the landlord's application to end this tenancy for illegal activity without leave to reapply.

I have not considered the merits of the remainder of the landlord's application for an end to this tenancy on the basis of the 1 Month Notice. I have taken this approach to sever the issues identified in the landlord's 1 Month Notice because there is undisputed sworn testimony from both parties that the landlord has continued to accept rent payments from the tenant after the landlord issued the 1 Month Notice and even after the effective date of the 1 Month Notice. The tenant gave undisputed sworn testimony that she understood that her payment of monthly rent to the landlord in May and June 2014 reinstated her tenancy. The landlord testified that he did not issue receipts for these rent payments, nor did he advise the tenant that he was accepting her payments for "use and occupancy only" and not to reinstate her tenancy. Under these circumstances, I find that the landlord has effectively reinstated this tenancy after the date he was seeking an end to this tenancy as per his 1 Month Notice. I thus allow the tenant's application to dismiss the remainder of the landlord's 1 Month Notice of April 17, 2014, and dismiss the landlord's application for an Order of Possession based on that 1 Month Notice without leave to reapply. As the landlord's application is dismissed, he bears the cost of his filing fee for this application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice of April 17, 2014. The 1 Month Notice of that date is of no continuing force or effect. I dismiss the landlord's application without leave to reapply. 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: June 12, 2014

Residential Tenancy Branch

