



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

On September 24, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were placed under the Tenant's door on September 25, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 03, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were placed under the Landlord's door on October 06, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties indicated they were ready to proceed with the hearing and did not need additional time to consider the documents served as evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2007 and that rent is due by the first day of each month.

The Landlord and the Tenant agree that on July 25, 2014 a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit, which declared that the Tenant must vacate the rental unit by September 01, 2014. The reasons cited for ending the tenancy on the Notice are that the Tenant has been repeatedly late paying her rent and the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord stated that the Tenant has not paid her rent when it was due on several occasions, although she did not note the dates when the rent was not paid on time. She stated that she cannot now recall when rent was not paid on time, although she does recall that rent for October was not paid until October 02, 2014.

The Tenant stated that she has been late with her rent on a few occasions, including October of 2014. She stated she does not know specifically when her rent was not paid on time.

The Landlord stated that there is no written tenancy agreement. She stated that when the Tenant moved into the rental unit she asked the Tenant to pay a security deposit. She stated that the Tenant did not pay the security deposit and she does not know if she ever asked the Tenant to pay the deposit after the tenancy started.

The Tenant stated that she does not recall ever being asked to pay a security deposit.

The Landlord asked to call a witness who will testify regarding the Landlord's concern regarding her sense of security having someone living in the rental unit. As this information is not relevant to the reasons cited for ending the tenancy on the Notice to End Tenancy, the Landlord was not permitted to call this witness.

Analysis

Section 47(1)(b) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent. The burden of proving the tenant is repeatedly late paying rent rests with the landlord.

I find that the Landlord has provided insufficient evidence to show that the Tenant has been repeatedly late paying the rent. In reaching this conclusion, I was heavily influenced by the fact the Landlord could not state when the rent was not paid after the due date, with the exception of this month. As the Landlord cannot clearly demonstrate that the Tenant was late paying her rent on at least three occasions, I find that she cannot end this tenancy on the basis of rent being paid late prior to July 25, 2014, which was when the Notice to End Tenancy was served.

Section 47(1)(a) of the *Act* authorizes a landlord to end a tenancy if a tenant does not pay the security deposit within 30 days of the date it is required to be paid. The burden of proving that a security deposit is due rests with the landlord.

I find that the Landlord has provided insufficient evidence to show that the Tenant agreed to pay a security deposit. In reaching this conclusion, I was heavily influenced by the testimony of the Tenant, who stated she does not recall being asked to pay a security deposit and by the absence of evidence that corroborates the Landlord's testimony that a security deposit was required. As the Landlord cannot clearly demonstrate that a security deposit was required, I find that she cannot end this tenancy on the basis of the deposit not being paid.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to sections 47(2)(a) or 47(2)(b) of the *Act*, I set aside the One Month Notice to End Tenancy, dated July 25, 2014, and I order that this tenancy continue until it is 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*.

Dated: October 07, 2014

Residential Tenancy Branch

