



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the female tenant.

During the hearing, the landlord did not verbally request an order of possession should the tenants be unsuccessful in their Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submits that the tenancy began in 2012 as a month to month tenancy for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00. The landlord did not disagree with these details.

The tenant submitted into evidence the following documents:

- A copy of a Notice to End Tenancy for Landlord's Use of Property issued on September 19, 2014 with an effective date of October 19, 2014 stating: "I am going to sell the house and I would like to renovate it, before doing so"; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on October 1, 2014 with an effective vacancy date of October 31, 2014 citing the tenants have been repeatedly late paying rent.

The landlord testified the tenant was late paying rent on the following occasions: October 2014 paid on October 24 or 25, 2014; September 2014 paid on September 15 or 17; August 2014 paid in the first or second week of August 2014.

The tenant submits that this is not true but rather they had paid October 2014 rent on October 3, 2014; September 2014 rent on September 5, 2014; and while she was not certain of the specific date stated August 2014 rent could have been paid in the second week in August, 2014.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving the tenants notice to end the tenancy if the tenant is repeatedly late paying rent. A notice issued under this section must end the tenancy effective on a date that is not earlier than a month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that 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.

From the tenants testimony I find that the tenants have been late paying rent on at least 3 occasions and as such, I find the landlord is entitled to end the tenancy under Section 47 of the *Act* pursuant to the Notice to End Tenancy for Cause issued on October on October 1, 2014.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

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: November 25, 2014

Residential Tenancy Branch

