



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy served November 17, 2014, given for repeated late payment of rent.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the tenant has been repeatedly late paying rent? If so, are there mitigating circumstances that might justify cancellation of the Notice?

Background and Evidence

The rental unit is the two bedroom upper portion of a residential home. It apparently includes a portion of the lower area, otherwise taken up by a second rental unit.

The tenancy started in October 2004. The current rent is \$852.00, due on the first of each month. The tenancy agreement requires payment of a \$362.50 security deposit. The landlords claim to have received only \$250.00.

The tenant lives in the rental unit with her four children. There is a second tenant disclosed by the tenancy agreement but it appears that he vacated the rental unit some years ago.

It is not disputed that in the calendar year 2014 the tenant has paid her rent on time perhaps twice. Indeed, in the year 2013 she was late paying her rent eleven out of twelve times.

In November 2012 the landlords wrote the tenant noting that the rent was overdue and asking whether the tenant needed an eviction notice. The landlord Ms. D.M. indicated that such a Notice would have been for the purpose of prompting payment to the tenant from the welfare office. The note indicates that the landlords “hope we don’t have to go through this issue of late rent every month.”

The landlords wrote the tenant again November, 6, 2014 noting among other things “[t]he rent is always due on the 1st and it is now five days late.”

The tenant says she has difficulty paying rent by direct deposit to the landlords’ bank account. It is not disputed that the tenancy agreement addendum required that method of rent payment.

Analysis

The tenant has been repeatedly late paying her rent and would normally be evicted for doing so.

However, in this case, the landlords have acquiesced in that consistent late payment for two years. Fairness dictates that if they now wish to impose on their tenant a strict compliance with the payment terms of the tenancy agreement, they give the tenant fair notice of their decision to hold her to the letter of that tenancy agreement.

For this reason I allow the tenant’s application and cancel the one month Notice to End Tenancy. Further, I declare that this hearing serves as official notice to the tenant that she is henceforth required to pay her rent on its due date and if she is repeatedly late in doing so the landlords may issue another Notice to End Tenancy on that basis.

The tenant included in her evidentiary package a “monetary order worksheet” indicating a claim for recovery of utility payments. That claim was not set out in the application filed with the Residential Tenancy Branch or the claim that was served on the landlords. For that reason I determine not to adjudicate it with the dispute regarding the Notice to End Tenancy.

The tenant is free to re-apply in regard to that claim and if any leave to do so is required, I hereby grant it.

Conclusion

The Notice to End Tenancy dated November 17, 2014 is hereby cancelled.

As the tenant has been late paying rent, I decline to award her recovery of any filing fee.

This decision was rendered orally at hearing and 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: December 29, 2014

Residential Tenancy Branch

