



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for cause of repeated late payment of rent pursuant to section 47; and (b) to recover the filing fee for this application.

Service:

The landlord submitted in evidence several ten day Notices to End Tenancy but no one month Notice. The landlord said they did not issue a one month Notice so then elected to proceed on the latest ten day Notice dated October 2, 2014. The parties confirmed service of the documents.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to either section 46 or 47 and they are entitled to an Order of Possession or is the tenant entitled to any relief? Is the landlord entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the landlord did not issue a one month Notice for repeated late payment of rent but only issued several ten day notices. They elected to proceed with the last ten day Notice dated October 2, 2014 showing rent owed of \$1,170.19. The landlord said the tenant had paid all the outstanding rent on October 6, 2014. The landlord's representative had some questions. I directed her to the one month notice which is issued under section 47 of the Act and provides as one cause, 'repeated late payment of rent'. It appears from the evidence submitted that the landlord has proof of that cause but the notice was not issued under section 47.

The tenant said the landlord is now charging a late fee which implies that paying late is okay. He wondered if this is legal. He agreed they have been late sometimes. He apologized to the landlord for the sometimes verbal outbursts of his father, who is ill. I directed him to section 7 of the Residential Tenancy Regulations (available online)

which states a late fee is limited to \$25 provided this is stated in the lease (s.7 (2)). On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that there is unpaid rent and the landlord is entitled to an Order of Possession pursuant to sections 46 or 47 and 55. Since no Notice to End Tenancy was issued under section 47, I find the landlord is not entitled to end the tenancy under this section.

Section 46 of the Act provides for a ten day Notice to End Tenancy for unpaid rent. In this case, a section 46 Notice was issued on October 2, 2014. I find the tenant paid rent in full on October 6, 2014. I find section 46(4) states if the tenant pays the overdue rent within 5 days after receiving the Notice, the Notice has no effect. Therefore, I find the ten day Notice dated October 2, 2014 is of no effect and this tenancy is continued.

In response to the landlord's dispute that this provision only encourages tenants to pay late, I directed her to section 47 which provides there is a one month notice for the cause of repeated late payment of rent and the tenant paying rent within five days after the issuance of that Notice would not cancel the Notice. If rent is accepted after the issuance of a Notice to End Tenancy, the landlord is advised to issue a receipt noting it is "for use and occupancy only" and does not reinstate the tenancy.

Conclusion:

I dismiss the Application of the landlord. I find the Notice to End Tenancy dated October 2, 2014 is legally of no effect and no section 47 Notice was issued. Therefore, the tenancy continues. I find the landlord not entitled to recover filing fees.

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: December 03, 2014

Residential Tenancy Branch