



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNL, CNR, MNR, MNDC, OLC, ERP, RP, PSF, LRE

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to cancel a Notice to End Tenancy, To cancel a Notice to End Tenancy for cause, for unpaid rent and for landlord's use of the property; for a monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; for an Order for the landlord to provide services and facilities required by law and to suspend or set conditions on the landlord's right to enter the rental unit.

This hearing originally started on March 10, 2015 and was adjourned on that date as the tenant had filed a similar application which had been heard in February and March, 2015. As that decision had not yet been rendered and many of the tenant's issues were the same, the hearing was adjourned until today's date. The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The tenant provided a copy of the decision made for the previous hearing between the parties. The file number for the previous hearing is included on the front cover of this decision. Having read that decision I find the principal of Res Jucatia applies to most aspects of the tenant's application for this hearing. When matters have been previously heard and a decision rendered I am unable to hear the same issues again.

Consequently, the tenant's application is dismissed with the exception of her application to cancel the One Month Notice to End Tenancy and the Two Month Notice to End Tenancy. As the landlord has not served the tenant with a Two Month Notice to End Tenancy this section of the tenant's claim has no merit.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2014. Rent is \$1,500.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause. A copy of the Notice has been provided in evidence and was issued on February 16, 2015. The effective date of the Notice is March 16, 2015 and provides one reason to end the tenancy as follows:

- 1) The tenant is repeatedly late paying rent.

The landlord testified that the tenant paid rent late In January and February, 2015 when the tenant's rent cheques were not honoured at the bank because the tenant had put a stop payment on the cheques. The landlord testified that prior to January, 2015 the tenant had paid her rent on time. The landlord testified that the tenant has now failed to pay rent for April on time. The landlord testified that rent for February and April is outstanding.

The landlord orally requested an Order of Possession at the hearing effective as soon as possible.

The tenant testified that she has always paid her rent on time but when she had no heat she put a stop payment on January and February's rent cheque as the tenant had to pay for the furnace repair. The tenant testified that the furnace repair did not equal the amount of rent for January and February and agreed that this has been dealt with at the previous hearing. The tenant testified that when the One Month Notice was served she had only two late payments of rent.

The tenant seeks to have the One Month Notice cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. This tenancy has clearly broken down and there is significant animosity between the parties. The parties were both cautioned at the hearing to remain respectful to each other and to the proceedings.

I refer the parties to the Residential Tenancy Policy Guidelines #38 which states, in part, that three late payments are the minimum number sufficient to justify a Notice under these provisions. The landlord has the burden of proof in this matter and stated that at the time the Notice was served in February, 2015 the tenants had only paid rent late for January and February, 2015.

Consequently, I am not able to consider that the tenant has been repeatedly late paying rent as stated in the reason given on the One Month Notice.

I therefore uphold the tenant's application to cancel the One Month Notice and I deny the landlord's oral request for an Order of Possession.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, February 16, 2015 is cancelled and the tenancy will continue at this time.

The remainder of the tenant's application is dismissed without leave to reapply under the principal of Res Jucatia.

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: April 23, 2015

Residential Tenancy Branch

