



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Ltd. Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

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

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on April 1, 2015 in accordance with Section 89.

I also note that the landlord submitted evidence to the Residential Tenancy Branch on April 10, 2015 including a copy of the tenancy agreement; 1 Month Notice to End Tenancy; and a tenant ledger.

Based on the testimony of the tenant and the fact the landlord has submitted evidence responsive to the tenant's Application, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

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, pursuant to Sections 47 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on January 24, 2013 for a 1 year fixed term tenancy beginning on February 1, 2013 that converted to a month

to month tenancy on February 1, 2014. The current monthly rent is \$825.12 due on the 1st of each month with a security deposit of \$395.00 paid;

- A copy of a 1 Month Notice to End Tenancy for Cause issued on March 26, 2015 with an effective vacancy date of April 30, 2015 citing the tenant is repeatedly late paying rent; and
- A tenant ledger confirming that on at least 14 occasions the tenant was late paying rent.

The tenant confirmed he agreed that he had been late paying rent on at least 14 occasions. He testified that since he received the Notice he has paid his April and May 2015 rent on time and he is taking steps to ensure that he is not late again.

The tenant testified that the landlord had never warned him that he would be risking his tenancy if he was regularly paying rent late. He stated that on March 15, 2015, when he went to pay his March 2015 rent, the landlord's agent cautioned him that he should pay his rent on time because "they had been called about him".

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

In the case before me I find the tenant has been late paying rent at least 3 times since the start of his tenancy. However, I also find, based on the tenant's undisputed testimony, the landlord has continued to allow the tenant to make these late payments without warning him that he is jeopardizing his tenancy.

As such, I find the landlord cannot now end the tenancy, without warning to allow the tenant to change his behaviour, based on these late payments. However, I caution the tenant that he should now consider himself sufficiently warned that the landlord may end the tenancy, for repeated late payment of rent, if the tenant fails to pay even a single future rent payment when it is due according to the tenancy agreement.

Conclusion

Based on the above, I grant the tenant's Application for Dispute Resolution and cancel the 1 Month Notice to End Tenancy for Cause issued on March 26, 2015. I order the tenancy remains in full force and effect.

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: May 12, 2015

Residential Tenancy Branch

