



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

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 and the landlord.

At the outset of the hearing I clarified with the tenant what she meant by marking "Other" on her Application for Dispute Resolution. She stated that she wanted to discuss the landlord's behavior towards and his harassment of her. I further clarified with her that the remedy she sought from these proceedings for her to be able to continue her tenancy.

As the tenant's primary objective from this Application was to continue her tenancy I find that the primary issue before me was to determine whether the 1 Month Notice to End Tenancy for Cause was valid and enforceable or if it should be cancelled.

To that end, I allowed testimony from both parties specifically related to the issue set out in the 1 Month Notice to End Tenancy for Cause: repeated late payment of rent. After both parties had completed testimony regarding this issue I offered to both parties to present any evidence or testimony in regard to the tenant's issues of the landlord's behavior and harassment.

I did advise both parties that even if they provided testimony on these issues that as they had no bearing on the outcome of whether or not the tenancy would continue and the tenant was not seeking any remedy as a result of behavior or harassment that the decision would not be affected by it and it would not be recorded in the decision.

Both parties declined to present further testimony or evidence. I then closed the hearing and began to provide my closing remarks to the parties. The tenant asked if she could provide further testimony on one more thing. The tenant proceeded to present verbal testimony regarding the complaints of harassment that she had submitted in her documentary evidence.

I interrupted the tenant to ask her to provide some clarity on why she was presenting this testimony and she continued with further testimony regarding a recent incident with

the landlord. After she was finished I allowed the landlord to respond but advised him again that as the issues raised were not relevant to the decision I would be making he did not have to respond. The landlord did provide a short response.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

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 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on April 2013 for a 1 month fixed term tenancy for a monthly rent of \$725.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The tenant provided a copy of a 1 Month Notice to End Tenancy for Cause issued on April 10, 2015 with an effective vacancy date of May 15, 2015 citing the tenant is repeatedly late paying rent. The tenant originally testified that she received the Notice on April 10, 2015 after the landlord had posted it on the door. The tenant later changed to her testimony to state that she was not sure when she actually received the Notice.

The landlord present testimony and documentary evidence that the tenant had provided payment of rent late on at least 4 occasions, including the following:

- A copy of a money order from the tenant dated August 8, 2014;
- A copy of a money order from the tenant dated September 5, 2014;
- A copy of a money order from the tenant dated February 6, 2015;
- A copy of a money order from the tenant dated April 10, 2015.

The tenant does not dispute that rent for these months was pay by these money orders on the dates noted on them and has provided the following explanations for each of these payments:

- August 8, 2014 – she had provided the landlord with a cheque dated August 1, 2014 and that he cashed the cheque on the morning of August 1, 2014 before she had deposited the money intended to cover the rent. The tenant submits that usually the landlord doesn't cash the cheques on the same day that it is due and that she did have her money in her account before midnight on August 1, 2014;

- September 5, 2014 – several days after September 1, 2014 all the tenants had been talking about how the landlord had not yet cashed anyone's cheques for rent for the month of September 2014. So the tenant decided to take her rent money out of her account and provide the landlord with a money order, as such it is dated September 5, 2014;
- February 6, 2015 – she had asked the landlord if she could make her rental payment that was due on February 1, 2015 on February 6, 2015. She said the landlord did not respond other than just by smiling at her and she took this mean the landlord was approving a late payment; and
- April 10, 2015 – despite paying the landlord by money order over the past several months she thought it would be okay to use a personal cheque again and so she issued the landlord a cheque. The landlord did not cash the cheque until April 7, 2015 at which time several insurance payments were made from her account rendering the rent cheque to be considered insufficient funds. If the landlord had cashed the rent cheque when it was due on April 1, 2015, even though she did not have sufficient funds her account for all of these payments on the 7th she states her insurance payments would have gone through because she would have deposited funds to cover them on the 8th or 9th of April.

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. Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice within 10 days the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

Despite the tenant's original testimony, I find there is insufficient to establish specifically when the tenant received the 1 Month Notice to End Tenancy for Cause. As such, in the interest of natural justice and administrative fairness, I find it appropriate to consider the deeming provisions under the *Act* that allow 3 days after a Notice is posted on a rental unit door for the documents to be deemed received.

As the Notice was posted on April 10, 2015 after allowing 3 days for receipt of the Notice I find the tenant received the Notice on April 13, 2015 and had until April 23, 2015 to file her Application for Dispute Resolution. The tenant's Application is stamped as received by the Residential Tenancy Branch on April 22, 2015. I find the tenant has submitted her Application for Dispute Resolution within the required timeframe.

Based on the evidence and testimony provided by both parties, I find the landlord has established that the tenant has been late paying rent on at least 4 occasions since and including August 2014.

Residential Tenancy Policy Guideline #38 states that 3 late payments are the minimum number sufficient to justify a notice under the provisions of Section 47.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. When looking at the issue of repeated late payment of rent consideration can be given if tenant provides evidence that the reasons for the late payment are outside of the control of the tenant; such as a bank error.

This requires the tenant to ensure that if the tenant is paying rent by cheque that there are sufficient funds in their bank account on the day that rent is due until the cheque is successfully cashed or stale dated, despite any other commitments; cheques; or payments that may be going through their account.

As to the tenant's explanations for the late payment of rent for the months of August 2014 and April 2015, I find that while the tenant provided the landlord with cheques for these rental payments she did not ensure that she had funds in her account either for the date they were issued (August 1, 2014) or until they were cashed by the landlord (April 7, 2015). As such, I find that these late payments must contribute the count of the number times the tenant has paid rent late.

In regard to the tenant's explanation for the payment for September 2014, as noted above the tenant's obligation is to ensure she has provided payment to the landlord on the date specified in the tenancy agreement. There is no such obligation on the landlord to cash a rental payment cheque on any particular day.

If the tenant had provided the landlord with a cheque for September 2014 rent and later decided to change her payment method from that cheque to a money order by withdrawing the funds that would have covered the cheque she should have informed the landlord of her change of mind prior to her taking steps to do so.

In failing to do so she took the risk that the landlord would not attempt to cash the cheque that she had provided him. If she had left the funds in her account the payment would not have been late. Again, I find that this late payment must contribute the count of number times the tenant has paid rent late.

And finally in relation to the late payment for the month of February 2015 I find that regardless of whether or not a tenant informs their landlord or requests the landlord's approval to make a late payment does not change the fact that the tenant has made payment for rent that is late according to the requirements of their tenancy agreement. Therefore, I find that this late payment must also contribute the count of number times the tenant has paid rent late.

As a result, I find the landlord has established that the tenant has been late paying rent on at least 4 occasions and as such is entitled to end the tenancy for cause.

Section 47(2) of the *Act* states that a notice under Section 47 must end the tenancy effective on a date that is not earlier than one 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.

In the case before me the 1 Month Notice was issued on April 10, 2015 with an effective vacancy date of May 15, 2015. Rent is due, according to the tenancy agreement, on the 1st of each month. As such, to be compliant with Section 47(2) the earliest date for the Notice to take effect would be May 31, 2015.

Section 53 states that if a landlord gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section the effective date is deemed to be change to the earliest date that complies with that section. As a result, I order the effective vacancy date of the 1 Month Notice issued on April 10, 2015 to be May 31, 2015.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and order that the tenancy ended on May 31, 2015 and the tenant must vacate the rental unit.

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: June 05, 2015

Residential Tenancy Branch

