



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated April 30, 2015 valid?

Background and Evidence

This is a long term tenancy. The current monthly rent is \$790.00 and will be increasing to \$806.00 on July 1. The rent is due on the first day of the month.

On June 23, 2014 the landlord was granted an order of possession. The tenant spoke to the owner of the building after he was served with the order. He promised to pay the rent on time if the landlord would let him stay. The landlord agreed to reinstate the tenancy.

On April 30, 2015 the landlord issued a posted a 1 Month Notice to End Tenancy for Cause. One of the reasons stated on the notice is that the tenant is repeatedly late paying rent.

Although the landlord did not provide a copy of a ledger or receipts or other documentation to show the actual dates and amounts of rent payments made by the tenant in the past year he did testify that the tenant had continued his usual habit of paying the rent somewhere between the fifth and tenth day of the month. The landlord filed a collection of undated notes from the tenant: all of which say that the remained of the rent will be paid on a particular date and many of which promise that this will be the last time he is late.

The tenant's evidence is that he has been frequently late paying his rent throughout his tenancy. He tries to always make at least partial payment on the first of the month and he gives the landlord a note saying when he will pay the balance; usually on the next pay day. The tenant gets paid bi-weekly, not on the first of the month. The tenant also explained that other personal emergencies arise, like unexpected car repairs. The tenant testified that in the past twelve months he has paid the rent in full by the first of the month four or five times.

In his application for dispute resolution the tenant said he felt that he and the landlord had an understanding regarding his method of rent payment. The owner of the property submitted a

statement saying the tenant has been spoken to many times about the need to pay the rent on time. The building manager gave similar testimony.

Analysis

Section 47(1)(b) of the Residential Tenancy Act allows a landlord to end a tenancy where the tenant is repeatedly late paying the rent. As explained in Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent three late payments are the minimum number sufficient to justify a notice under this provision.

The evidence is undisputed that the tenant has been late with the rent seven or eight months of the last twelve.

I find that the landlord has established this ground for ending a tenancy and the 1 Month Notice to End Tenancy for Cause dated April 30, 2015 is valid. The tenant's application for an order setting aside the notice is dismissed.

Section 55(1) provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession.

The notice was posted on April 30 and pursuant to section 90 is deemed received on the third day after it is attached. This means that the effective date of service was May 3. The effective date of a 1 Month Notice to End Tenancy for Cause served on any day in May is June 30. (See sections 47(2) and 53.) In addition, the tenant has paid the rent to the end of June.

The landlord is granted an order of possession effective 1:00 pm. June 30, 2015.

Conclusion

The landlord is granted an order of possession effective 1:00 pm. June 30, 2015.

If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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 19, 2015

