



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sterling Mgmt Services Ltd.
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 both tenants; their advocate and an agent for the landlord.

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 cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began as a month to month tenancy for the current monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$235.00 paid. The parties disagreed on the start date – the tenant submitted the tenancy began in October 2007 and the landlord submitted it began in October 2009.

The tenant provided into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on June 15, 2015 with an effective vacancy date of July 31, 2015 citing the tenant is repeatedly late paying rent.

The landlord submitted into evidence a copy of a tenant ledger recording the tenants have been late paying rent 18 times since October 2011. Of these 18 late payments 14 were paid no later than the 5th of the month.

The landlord testified their practice is to allow tenants until the 5th to pay their rent and then they would issue a 10 Day Notice to End Tenancy for Unpaid Rent but that they do not provide any written warning to the tenants if they pay the rent within the first 5 days of the month. The landlord submits there were 10 Day Notices issued to these tenants over the course of the tenancy, however the only one submitted into evidence was one issued after the 1 Month Notice to End Tenancy was issued.

The tenants submit they were not aware they had been late paying that many times as the landlord had failed to provide a tenant ledger until they provided it as evidence for this hearing. The tenants do not recall ever receiving a 10 Day Notice other than the one issued after the 1 Month Notice was issued.

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.

I accept the tenants have paid rent late several times over the course of the tenancy, normally sufficient to provide the landlord cause to end the tenancy. However, by failing to provide any warnings that any late payments would contribute to a cause for the landlord to end the tenancy for late payments made since at least December of 2011 I find the tenants would have had no way of knowing the issue was of concern to the landlord.

Based on the above I find the landlord cannot at this time end the tenancy as a result of the tenants' repeated late payment of rent. However, I caution the tenants that from the date of this decision onward they should consider themselves sufficiently warned that late payment of rent on at least 3 occasions will provide the landlord with sufficient cause to end the tenancy pursuant to Section 47 of the *Act*.

Conclusion

I grant the tenant's Application for Dispute Resolution and order the 1 Month Notice to End Tenancy issued on June 15, 2015 is cancelled. 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: July 29, 2015

Residential Tenancy Branch

