



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started in October 2014. Rent of \$1,200.00 is payable monthly on the first day of each month. On May 13, 2015 the Landlord served the Tenants with a one month notice to end tenancy for cause (the “Notice”). The Notice contains one reason: repeated late payment of rent.

The Landlord states that the Tenants failed to pay their rent on time for January, February and May 2015. The Landlord provided copies of email transfers for those payments. The Tenant states that the Landlord agreed to accept rent late in February 2015. The Tenant states that January 2015 rent was paid on the 2nd as the first day of

the month was a holiday and that banks were not open on that day. The Tenant agrees that email transfers may be made on any day. The Tenant states that they asked the Landlord's daughter, who was acting as the Landlord's agent, to pay half the rent on the first day of the month and the remaining half later and that this was verbally agreed to. It is noted that the email transfer for February 2015 rent was made on February 1, 2015 and included the message "explained in email sent to you. Thank you ...". The Landlord states that no email was ever sent to them.

The Landlord states that at no time did they or their daughter agree to accept late rent payments and that their daughter could do nothing else but accept their late payments after they were made. The Landlord indicated that they would like possession of the unit as soon as possible. The Tenant states that they have paid rent for July 2015 and if not successful with this application would require more time to find another rental unit.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 47 of the Act provides that a landlord may end a tenancy with one month's notice where a tenant is repeatedly late paying rent.

The Parties agreed that rent was due and payable on the 1st of each month. Given the undisputed evidence that the rent was paid after the 1st of each month for three recent months and considering that there was no supporting evidence that the Landlord or their agent agreed in advance of the February 2015 rent coming due that rent could be paid on any day other than the first of the month, I find that the Landlord has substantiated on a balance of probabilities that the Tenants have been repeatedly late paying rent. As such the Notice is valid and the Tenants are not entitled to a cancellation of the Notice. The tenancy must therefore end and the Tenants' application is dismissed.

Although the Landlord seeks an order of possession for as soon as possible, considering that the Tenants have paid rent for July 2015 and require some time to

locate another rental I find that it would be reasonable to provide the Landlord with an order of possession for July 31, 2015.

Conclusion

The application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on July 31, 2015.

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 09, 2015

Residential Tenancy Branch

