



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, O, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order for compensation.

The hearing was conducted via teleconference and was attended by both tenants and both landlords.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenants' claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenants' claim for compensation. I grant the tenants leave to re-apply for compensation.

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

Issue(s) to be Decided

The issues to be decided are whether the tenants are 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

The parties agree the tenancy began on April 15, 2008 as a 1 year fixed term that converted to a month to month tenancy on April 16, 2009 for the current monthly rent of \$1,260.00 due on the 1st day of each month with a security deposit of \$600.00 and a pet damage deposit of \$600.00 paid.

Both parties provided, into evidence, a copy of a 1 Month Notice to End Tenancy for Cause issued on May 16, 2015 with an effective vacancy date of June 21, 2015 citing the tenant is repeatedly late paying rent.

The landlords submit that the tenants had originally been good about paying rent on time when the landlord had a property management company collecting rent but once the company was no longer providing services the tenants began paying rent late. The landlords submit that it kept getting worse and worse until the tenants were paying a portion of rent several times a month or no payments at all.

The landlords submit that the tenants have since caught up on their rental payments and for the months of June and July 2015 the tenants have not paid any rent as a result of a settlement agreement reached in response to a previous Application for Dispute Resolution made by the tenants for compensation. The landlords also acknowledge that rent for August 2015 will also be reduced as a result of that settlement agreement.

The tenants acknowledge that they had been late in paying rent in part because the male tenant had been injured and could not find work for a period of time but that he is now currently working.

They also state that rent became a problem when they received an unexpected high hydro bill. The tenants submit that ever since they moved into the rental unit, which is not adequately insulated, they have had high hydro bills and struggle to pay the rent when it comes in every two months.

The tenants submit that they were able to bring their rental payments current because they had been in an accident and received some funds from that that helped them cover the rental arrears.

The landlords submit that charges for water began after discussing with the tenants that the landlord would be charged for water from the local community and the tenants agreed to pay the additional charges. The tenants submit that the original tenancy agreement states that the tenancy included water.

The parties submitted spreadsheets regarding the rental payments made. The tenants did not dispute the payment dates as recorded but pointed out that on February 25, 2015 they made two payments of \$200.00 each but the landlord had recorded only a payment of \$200.00 in total.

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.

Based on the payment schedule submitted by the landlords that the tenants do not dispute records the payment dates I find the landlords have established the tenants have been late paying their rent at every month at least for at least a year until they had recently paid off their arrears by May 2015. As such, I find the landlords have established at least 3 times for late payment providing sufficient justification to end the tenancy pursuant to Section 47 of the *Act*.

Section 47(2) states that a notice given under Section 47 must end the tenancy on a date that is not earlier than 1 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.

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that complies with the relevant Section.

As the payment of rent in this tenancy agreement was required by the 1st of each month I find that the earliest the tenancy could end based on a 1 Month Notice to End Tenancy for Cause issued on May 16, 2015, to be compliant with Section 47(2) would be June 30, 2015. I amend the effective date of the Notice to be June 30, 2015.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety and I find the 1 Month Notice to End Tenancy for Cause issued on May 16, 2015 to be valid and enforceable and the tenants 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: July 14, 2015

Residential Tenancy Branch

